IN THE VALUATION TRIBUNAL FOR ENGLAND
IN THE MATTER OF A 2023 RATING LIST APPEAL

Case No: CHG101114183

Sitting remotely using
Microsoft Teams

Date: 26 November 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

Non-domestic rating; 2017 Rating List appeal; shop and premises; base rate in dispute; analysis of rent on comparable property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Robinson Brothers (Brewers) Limited v Durham County Assessment Committee [1937] 2KB 461; Poplar Metropolitan Borough Assessment Committee v Roberts [1922] 2 AC 93; Ludgate House Ltd v Ricketts (VO) & LB Southwark [2023]UKUT 36(LC) UTLC; Rozel Motor Company Ltd v Clark (VO) [1983] RA 70 ; Williams (VO) v Scottish & Newcastle Retail Ltd & Another [2001] EWCA Civ 185; appeal dismissed.

Before:
MR AN BACKWAY
MR P PATEL

Between:

S FRANSES LTD — **Appellant**

- and -

NICOLA JOHNSON
(VALUATION OFFICER) — **Respondent**

Regarding:
S FRANSES, 80 JERMYN STREET, LONDON SW1Y 6JD
(the "subject property")

The appellant observed with his microphone and camera off.
Mr S Hicks of Dunlop Heywood (as advocate and expert witness on behalf of the appellant)
Mr A Powell (as advocate and expert witness on behalf of the respondent)
Hearing date: 27 October 2025

DECISION AND STATEMENT OF REASONS

DECISION

1. The appeal is dismissed.

2. The Tribunal finds the rateable value (RV) of the subject property of £197,000 with effect from 1 April 2023 reasonable.

STATEMENT OF REASONS

Introduction

3. This is a 2023 rating list appeal for S Franses, 80 Jermyn Street, London SW1Y 6JD (the subject property) which was entered in the 2023 rating list as ‘shop and premises’ at an RV of £295,000 with effect from 1 April 2023 but was reduced during the challenge stage to £197,000. The challenge proposal was submitted on 21 August 2023. The challenge sought a revised assessment of £97,750 RV with effect from 1 April 2023. The Valuation Officer (VO) determined that it was not well founded and issued a challenge case decision notice on 13 March 2025 which stated that based upon the evidence and information available, the rating list entry of £197,000 RV was reasonable.

4. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, this appeal was received by the Tribunal on 28 May 2025.

5. Mr Hicks appeared on behalf of the appellant as both advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC). Mr Hicks confirmed that he was not instructed under a contingency fee but on an hourly rate and he declared 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 his client’s case.

6. 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).

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

8. The subject property is on the basement and ground floor of the Cavendish Hotel on Jermyn Street in the West End of London. The street is internationally renowned for the retail of men’s clothing, boutique and artistic uses and is in a planning conservation area. The subject property is a is a gallery and archive of bespoke historic European tapestries and carpets. It has a return frontage and is 132m^2 on the ground floor accommodation and has an extensive basement.

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

Relevant Law

10. 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.

11. In respect of an appeal against an entry in the 2023 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2021, 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 1 April 2023, being the commencement date of the 2023 rating list.

Discussion

13. The issues between the parties that remain outstanding are whether the ITZA should be reduced further than the present £2,280/m^2. The appellant submits that there are various factors which they believe would impact on the rental bid of a hypothetical tenant new to the scene would make. These factors would support a further reduction in the rental bid if the subject property were vacant and to let. The VO submitted that the restrictions on the subject property were not in her view sufficient to impact on the ITZA rate further and the present RV was reasonable.

14. The appeal hereditament 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). The date of the hypothetical rent was 1 April 2021.

15. The panel turned to the six propositions set down in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 which was binding on this panel. The first two propositions are:

(1)Where the hereditament which is the subject of consideration is actually let, that rent should be taken as the starting basis.

(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 section 19(6) of the General Rate Act 1967 the more weight should be attached to it. (These statutory requirements now contained in Schedule 6, Para 2 (1) Local Government Finance Act 1988 (as amended by the Rating (Valuation) Act 1999)).

16. The panel noted that the subject property was held under a lease with the rent determined by the County Court. The appellant had been in occupation of the subject property under the terms of lease with the owner of the property. The lease renewal was refused on the basis the landlord stated that he had plans to redevelop the subject property. The appellant however applied to the court on the grounds that the landlord was not going to redevelop the property but wanted to evict the appellant. This matter went to the Supreme Court but in the meantime the County Court made an order for the appellant to pay rent in the sum of £102,000 per annum from 27 May 2021.

17. The order also included a twelve month rent-free period which Mr Hicks proposed that nine months of it should be considered an incentive as it is above the norm therefore he proposed a deduction of 14%. Mr Hicks submitted that the rent on the subject property was from a date close to the antecedent valuation date (AVD) and as such always carried the most weight. Mr Hicks submitted that when setting the rent for the subject property the Judge heard evidence from several very experienced valuers as to the likely market rent for the subject property. On that basis although the rent was not an open market rent the evidence on which the County Court set the rent included a large basket of rental evidence. This he submitted made the rent as close to an open market rent as was possible and on that basis the panel should put weight on it as if it were an open market rent.

18. The panel took into consideration the submission from Mr Powell that the County Court valuation did in fact also support a Zone A rate of £2,280/m^2. He explained to the panel that having examined the conclusions of the Judge the following was a breakdown of the calculation:

Zone A rate at the valuation date on a general retail property in the vicinity of the subject property	£2,280/m^2
Return frontage	+5%
Bar on external alterations	-2%
Frontage depth	-20%
15 year lease with no break clause	-5%
Restrictive user clause ‘art market’	-20%
Alienation	-5%
Landlord entry rights	-2.5%
Rent free period	12 months

19. The panel found that the Judge in setting the rental figure had made some allowances which related to that particular lease and not to the property. In relation to the allowances particular to this lease these were not included in the rating hypothesis. The RV is to be calculated based on what was in the hypothetical tenants mind not the terms in this particular lease. The two allowances which were relevant to the hypothetical tenant were the allowances for the return frontage and the frontage depth. These Mr Powell submitted were already included in the RV for the subject property as line entries. The appellant submitted that the twelve month rent free period should be considered based on the assumption of nine months being an incentive and amortising to the fifth year review. The panel found that although the rent on the subject property was not an open market transaction the analysis of that rent in accordance with the VO's calculation supported a Zone A price of £2,280/$m^{2.}$ The panel put little weight on the appellant's proposal that there should be a further approximate reduction of 14% to take into account the 12 month rent free period as this was already allowed for in the current RV.

20. The panel then looked to the comparable properties provided by both parties. The third and fourth propositions set out in *Lotus and Delta* were considered by the panel in regard to the comparable properties put into evidence by both parties:

> (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 be properly be referred to as giving an indication of that opinion

21. The panel firstly considered the submission by Mr Hicks that when arriving at the rent on the subject property the Judge had taken into consideration a wide basket of evidence presented by the valuers who gave evidence at the hearing. The rent was therefore set after due consideration of open market rents at the AVD which all supported the rent on the subject property. The panel then noted that it was Mr Powell's submission that the comparable property presented into evidence at the County Court was a lease renewal on 95 Jermyn Street from September 2020. The panel noted that this was a lease renewal from a time in the middle of Covid and six months before the AVD. On that basis the panel found this evidence to be of limited weight when determining the RV for the subject property.

22. The panel noted that the first group of rental evidence presented by the VO was from Jermyn Street and had effective dates between June 2020 and September 2022 close to the AVD. They consisted of three lease renewals, a rent review and three new leases. The comparable properties had an ITMS of between 31.08m^2 and 98.91m^2. The panel was aware that they demonstrated a tone of between £3,344/m^2 to £3,775/m^2 ITZA which the panel found supported the present ITZA on the subject property of £2,280/m^2. They were also verified lease details and so the analysis included any adjustments based on the terms of the respective leases and the panel put weight on this evidence.

23. The second group of comparable properties put into evidence by the VO were two comparable properties on Piccadilly with an ITMS of 22.31m^2 and 463.34m^2. The first one was a new lease and the other a lease renewal from May 2020 and May 2021 respectively. The rent on these properties analysed to £2,689/m^2 and £2,802/m^2. The panel noted that they were not on the same street as the subject property and so placed less weight on this evidence.

24. The panel noted that Mr Powell then included a comparable property not considered by the County Court which was a new lease on 75A Jermyn Street. This tenancy was determined in October 2021 with an effective rent of £2,385/m^2. The panel found that this was a new five year lease close to the AVD and was on the open market and therefore put weight on this evidence.

25. The panel now turned to the fifth and sixth propositions from *Lotus and Delta*, namely:

(5)In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attached to 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 each circumstance, it would be difficult to reject the evidence of the actual rent.

26. The panel found the totality of evidence submitted by the VO was more persuasive. The panel put weight on the comparable properties on Jermyn Street which were either new leases, lease renewals or rent reviews close to the AVD. Therefore, in line with the fifth and sixth propositions in *Lotus and Delta* the panel found the basket of evidence supported the ITZA rate of £2,280/m^2.

27. The panel then turned to Mr Hick's submission that the subject property was in an area with a very restrictive planning policy. The area where the subject property was located was an internationally renowned area of London for specific uses to include mixed retail, depository of textiles, publishing, textile art and carpets. These uses were very precise and so only a very select group of tenants would be interested in renting the subject property. The panel then considered the written evidence provided by Mr Slater in which he confirmed that the very strict planning restrictions would have a significant impact on the number of hypothetical tenants who would consider making a rental bid on it and therefore its RV. He described the restrictions as "significant" and went on to comment that "the value of a hereditament to a hypothetical tenant lies fundamentally in the attractiveness of the locality in which it sits, the use to which it is put and the hereditaments physical attributes". Mr Hicks submitted that under these restrictions the only tenant who could occupy the subject property would have to be a tenant whose business lay with bespoke historic tapestries.

28. Mr Hicks referred the panel to the three steps as laid down in the Court of Appeal case of *Robinson Brothers (Brewers) Limited v Durham County Assessment Committee [1937] 2KB 461.* The first being that a property must be valued rebus sic stantibus as it is. The second being that it is "the duty of the valuer to take into consideration…. every intrinsic circumstances which tends to push the rental value either up or down". This was on the grounds that they are all relevant to the valuation. The third is that the rent decided upon by the hypothetical landlord and tenant would be after bargaining for the particular hereditament including the competition or absence of it being 'the higgling of the market'.

29. The panel found that the subject property vacant and to let could have hypothetical tenants with other businesses within the list as set out by Westminster City Council without requiring planning permission. This would allow bids from hypothetical tenants from a larger pool of businesses which were not necessarily those who operated a bespoke historic tapestries business. The panel also found that as laid out in the case of *Williams (VO) v Scottish & Newcastle Retail Ltd & Another [2001] EWCA Civ 185* there are two limbs to the rebus sic stantibus principle the use and the physical limb. The subject property vacant and to let was

structurally the same as a general retail unit and would therefore satisfy the physical limb of the rebus sic stantibus principle. Further that a hypothetical tenant would be able to use the subject property for any of the uses included in the conservation policy and the physical limb of rebus sic stantibus would therefore also be satisfied.

30. Mr Hicks then referred the panel to the case of *Poplar Metropolitan Borough Assessment Committee v Roberts [1922] 2 AC 93* in which the dictum of Lord Parmoor stated that "in ascertaining this annual value all that can reasonably influence the judgment of an intending occupier ought to be taken into consideration". These binding cases Mr Hicks submitted meant that the panel must take into account the actual restrictions on the subject property and how they would impact on the rental bid a hypothetical tenant would be willing to make. The restrictions imposed by Westminster City Council was "sui generis" which was limited to "mixed use, comprising retail, depository, research centre, archive library, publishing and conservation for historic tapestries, textile art and carpets. He also referred the panel to the vacancy levels in the street at the AVD and this he submitted would result in a lower rental bid for the subject property.

31. The panel was aware that at the time of the AVD the retail market was weak after Covid had almost destroyed many retail areas. The panel also took into account that on Jermyn Street the vacancy levels were approximately 20% as at April 2021 the AVD. Along with the restrictions on the mode and category of use this would Mr Hicks submitted have made the subject property less attractive to a hypothetical tenant. The panel took into consideration the other cases referred to by Mr Hicks being *Ludgate House Ltd v Ricketts (VO) & LB Southwark [2023]UKUT 36(LC) UTLC* and *Rozel Motor Company Ltd v Clark (VO) [1983] RA 70* in which it was found that the impact of planning restrictions were to be taken into consideration in rating a property. The panel noted the two Tribunal cases put forward by VO but found them not to be applicable to this case as they concerned restrictions contained in covenants. The panel found however that the other part of the Cavendish Hotel was a shoe shop and therefore the planning restrictions did not limit the hypothetical tenant to having s bespoke historic tapestry and carpet business. This the panel found would mean that the limitations were not as severe and that the subject property vacant and to let could have a number of different types of potential tenants interested in the subject property. This would increase the bid of a hypothetical tenant due to supply and demand.

32. The panel was aware that in cases such as this it is for the appellant to prove his case and the panel did not find that he had. The panel found the lease on the subject property was not one from the open market, neither was it a new lease but rather a lease renewal. The terms of the lease were not inline with a lease on the open market as it was determined by court order. The panel therefore put little weight on that rental evidence. The panel found the comparable properties put forward by the VO to be persuasive as to the established tone in the vicinity of the subject property. It further found that the planning restrictions were wider than only allowing for a bespoke historic tapestry business to occupy the subject property as there were a number of categories included in the list. This would increase the number of hypothetical tenants who would be willing to put in a rental bid for the subject property vacant and to let.

Conclusion

33. In view of the above findings and conclusions, the Tribunal is satisfied that the current RV of £197,000 with effect from 1 April 2023 was reasonable and dismissed the appeal.

Right of further appeal

34. 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.

35. 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/.

Mr AN Backway, Presiding Senior Member
Mr P Patel, Senior Member
26 November 2025

Miss F Willson
Clerk to the Tribunal
Date issued to the parties: 26 November 2025