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

Case No: CHG101151753
and CHG101151795

Sitting remotely using
Microsoft Teams

Date: 1 October 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

2017 Rating List Appeals: Local Government Finance Act 1988; shop and premises; zoning; structural wall; tone; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeals allowed in part.

Before:
MR A CRAWFORD

Between:

HR OWEN DEALERSHIPS — **Appellant**

- and -

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

Regarding:

GND FLR 40-41, BERKELEY STREET, LONDON W1J 8EW
(the "subject property")

Mrs L Rabbette from Rabbette Chartered Surveyors
Mr Tawonezvi for the Respondent

Hearing date: 2 September 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeals were allowed in part.

2. I found that the Rateable Value (RV) of Gnd Flr 40-51, Berkeley Street, London W1J 8EW, (hereafter, known as the subject property) should be reduced to £337,500 with effect from 8 July 2019 and 19 March 2021.

Introduction

3. These were 2017 Rating List appeals relating to the same hereditament. The subject property had entered the 2017 Rating at an RV of £350,000 with effect from 8 July 2019. The Check was submitted on 28 March 2023 and completed on 5 July 2023. A Challenge was submitted on 3 November 2023 and completed on 17 February 2025. It had been made on the grounds that the tone was incorrect as from the effective date of 8 July 2019 and that the tone and mode of category were incorrect as from the effective date of 19 March 2021. Appeal number CHG101151795 related to a proposed revised RV of £280,000 with effect from 8 July 2019 and appeal number CHG101151753 related to a proposed revised RV of £260,000 with effect from 19 March 2021.

4. 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. These appeals were received by the Tribunal on 16 June 2025.

5. The hearing had originally two Tribunal members assigned to it. However, on the morning of the hearing, one Tribunal member could not attend. Therefore, I was authorised by the President of the Valuation Tribunal to sit alone as Senior Member for the hearing. This was in accordance with paragraph 11 of the Consolidated Practice Statement for the Valuation Tribunal for England 2025 – effective 1 July 2025

> ***Hearings where a member is unable to sit***
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> *Where a panel of two or three members is due to sit and one of them is unable to sit for any reason, or fails to appear, they will be replaced by another member wherever possible. However, to avoid postponement, a hearing will proceed with a Senior Member sitting alone where the panel member(s) give(s) notice of their unavailability within one working day of the commencement of the hearing. In all other cases the hearing must be postponed unless the President directs otherwise.*

6. Both Mrs L Rabbette from Rabbette Chartered Surveyors for the appellant and Mr C Tawonezvi for the respondent appeared 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) Mrs Rabbette stated that she was instructed on a conditional fee arrangement. She declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and she would comply with this as well as the requirements of her professional body, regardless of whether or not the evidence supported the client's case.

7. I accepted the expert witness evidence on the above basis as the appeals were 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). I therefore considered the expert evidence and attached such weight to it as I saw fit.

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

Background

9. The subject property was entered into the 2017 Rating List as a "shop and premises" on 8 July 2019. It occupied the ground floor of a multi-storey building located at 40–41 Berkley Street, London. The property benefited from being located within walking distance of Green Park, Green Park Underground Station, and Berkley Square.

10. The subject property was operating as a car showroom but had been valued as a retail unit using the zoned method. As of 8 July 2019, the dispute centred on the valuation approach applied. The Valuation Officer (VO) had assessed the property on a zoned basis, whereas Mrs Rabbette contended that it should be valued on an overall basis.

11. The subject property had been part of a larger hereditament known as Bst-Grd Flr 40-41, Berkeley Street, London, which was split in 2019. The appellant took occupation of the subject property on 8 July 2019 where the area had been agreed at 452.90 m².

12. Once the appellant had taken occupation of the subject property on 8 July 2019 the area of the subject property was agreed and the VO applied a Zone A rate of £1,500 per m². Mrs Rabbette argued that if the property was to be assessed on a zoned basis, the appropriate Zone A rate should be £1,200 per m². Alternatively, if the Tribunal determined that the property should be valued on an overall basis, she proposed a rate of £620 per m². Both approaches resulted in a revised RV of £280,000, effective from 8 July 2019.

13. However, the measurement of the property as of 19 March 2021 was in dispute. The disagreement stemmed from the installation of internal, non-load-bearing walls that subdivided the space into a showroom, office accommodation, toilet facilities, and a kitchen. Mr Tawonezvi maintained that the areas occupied by these walls should be included in the assessment, resulting in a total area of 452.90 m². In contrast, Mrs Rabbette contended that the correct measurement was 417.50 m², excluding the wall areas. Again, she proposed a Zone A rate of £1,200 per m² or an overall rate of £620 per m², both producing a revised RV of £260,000, effective from 19 March 2021.

Relevant Law

14. The term ‘rateable value’ is defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended):

> “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 various assumptions.

15. In respect of appeals 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).

16. In accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841), the date of the hypothetical rent was 1 April 2015 (the AVD). This common date was used to ensure that every property was treated in a consistent way. When assessing the RV of any hereditament, rating law also requires that it must be assumed to be ‘vacant and to let’, and in the state set out in Schedule 6 of paragraph 2(7) of the Act, in relation to both its physical nature and mode or category of use.

17. The issue before me was to determine the appropriate valuation of the subject property as of the two material dates relevant to the appeals, 8 July 2019 and 19 March 2021.

18. I referred to references made concerning: The Royal Institution of Chartered Surveyors (RICS) Code of Measuring Practice:

    Zone – The zoned area will include any space created using non-structural walls or partitions. This effectively means that non-structural partitions are ignored when using the zoning method.

    Partitions – where these, are non-structural they should normally be ignored for zoning purposes although part of the rateable hereditament. In the majority of cases, for both analysis and valuation it will be appropriate to zone through non-structural walls.

19. Reference was made to the case of Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141.

Discussion

20. The core issues were the unadjusted rate to be applied if on an overall basis or the Zone A rate applied if on a zoned basis. The first issue for me to determine was whether the subject property should be valued on a zoned basis or an overall basis. When determining the issue, I considered the mode or category of occupation and had to consider the subject property physically as it stood or *rebus sic stantibus*. Therefore, one had to look at the premises ‘vacant and to let’.

21. The issue of valuing a property *rebus sic stantibus* had been considered by the Court of Appeal in the judgment of *Scottish & Newcastle Retail Limited & Allied Domecq Retailing Limited v R F Williams (VO)* as referred to by Mrs Rabbette. The *Scottish & Newcastle* case involved two public houses located within a shopping centre in Milton Keynes. The Court of Appeal upheld the Lands Tribunal’s decision which found that the subject premises had to be valued *rebus sic stantibus* and having regard to the actual mode or category of occupation. It was held that the works required to strip the subject premises back to shells suitable for them to be let as retail units were not minor works and would not be in the contemplation of the hypothetical tenant when formulating a rental bid. It was held that the two public houses were not in the same mode or category of occupation as the shops and restaurants relied upon by the VO; the premises were valued as public houses and premises.

22. I was aware that there were two limbs to the *rebus sic stantibus* rule, which must be treated separately. The first rule being that the physical state of the property had to be regarded as at the material day (8 July 2019 and as of 19 March 2021). The only alterations permitted were minor alterations of a non-structural character. On this point, I had not been presented with any evidence to suggest there had been any major physical changes to the subject property. It was confirmed that the subject property had the addition of an office, kitchen and toilet facilities, along with the connection / installation of electricity and air conditioning. I

considered the area covered by the office, kitchen and toilet facilities, which had a total area of 64.47 m². As the structural walls were considered to be of a non permanent nature, any alterations made would have been minor in nature and would not offend the *rebus* rule.

23. The second limb of the *rebus sic stantibus* rule was that it had to be assumed that the hereditament could only be occupied for a purpose within the same mode or category of purpose as that for which it was being occupied on the material day. Any prospective change of use outside that mode or category should be ignored. As such, the question to be addressed was in what mode or category of use did the subject property's actual use place it on the material day.

24. Mrs Rabbette argued that the physical condition of the subject property had changed following the completion of internal works. She contended that the VO had assessed the property as an open space, disregarding its actual physical state. According to established legal principles, she maintained that the property must be valued in its physical condition as of the material day. She cited the High Court judgment in *Williams* as a binding precedent, contrasting it with the RICS Code of Measuring Practice, which she noted is not statutory. Mrs Rabbette further argued that the RICS Code does not account for the *rebus sic stantibus* principle and overlooks the nuances specific to rating valuation. In her view, the property should be assessed *rebus sic stantibus*, in its actual physical state, as supported by the decision of the Upper Tribunal.

25. Mrs Rabbette also referred to the Upper Tribunal (Lands Chamber) decision of The Appeal of Manning (VO) [2014]. The following paragraph was referred to:

> *"The Upper Tribunal upheld the VTE's decision that the area occupied by the staircase should be excluded from the NIA and dismissed the VO's appeal, concluding the following. "The question to my mind is altogether simpler than the appellant seems to appreciate. The hereditament to be valued in its actual condition includes a staircase, the presence of which means that the NIA to be taken into account is reduced by 55.07 sq m."*

26. However, this decision had since been superseded by the subsequent Upper Tribunal (Lands Chamber) case, RA/27/2019, concerning an appeal against a decision of the Valuation Tribunal for England by David Jackson (VO). No details of this decision were included within the VO's evidence. I was aware that within this decision, it had been agreed that the area occupied by the installed staircase was to be removed and the NIA reduced. Mrs Rabbette provided an extract from this decision:

> *"We first consider the difference between reality and the hypothetical straitjacket imposed by the statute. For rating, we are to assume that the property is valued having regard to its physical characteristics at the material day – that is with the staircase in place, and the 47 sqm of net internal area having been removed."*

27. I observed that, in the case referenced above, the occupier had installed an internal staircase connecting two floors within an office building. This alteration was likely of a permanent nature and, therefore, was not directly comparable to the circumstances of the subject property.

28. After having regard to all of the evidence presented, although the subject property was used as a car showroom, if vacant and to let, the changes made by the appellant, as non-structural alterations and not of a permanent nature, the subject property should therefore be considered to be a shop and premises.

29. When valuing the subject property using the zoning method, the zoned depth of the property is measured up to the first structural wall. In this case, I made reference to the layout plans submitted by Mrs Rabbette, which showed that there were walls located at the rear of the Zone B area. The dispute centred on whether these walls were of a permanent structural nature or could be easily removed. This distinction was critical in determining whether the areas beyond the walls should be included in the valuation as part of the office or showroom space, rather than being treated as Zone C or forming part of the Zone D area.

30. Mrs Rabbette suggested that a hypothetical tenant would make use of the existing office space within the subject property. In contrast, Mr Tawonezvi argued that the non-load-bearing walls could be removed without affecting the structural integrity of the building. As such, this section of the property should not be considered as having any structural impact.

31. Mr Tawonezvi further maintained that, given the partitions were non-structural, the subject property, if vacant and available to let would be regarded as a retail unit. A hypothetical tenant could remove the partitions to create an open retail space. Therefore, he concluded that the current assessment, based solely on zoned retail space, was appropriate.

32. After carefully considering the evidence presented by both parties, I concluded that although the partitions remained in place, they were not of a permanent nature. A review of the evidence demonstrated that the partitions installed by the appellant were non-load bearing. Consequently, I found that the VO had acted appropriately in excluding these areas from the assessment of the subject property, which was in line with the RICS Code of Measuring Practice. I therefore determined that the correct assessed area of the property was 452.90 m² on a zoned basis.

33. I then considered the appropriate value of Zone A to be applied to the subject property. The property was let on a 20-year lease, which had commenced on 16 September 2019, at an initial rent of £635,000 per annum. As this rent was agreed more than four years after the AVD, I attached limited weight to it as evidence.

34. Mrs. Rabbette referred to Bst, Grd Floor, 40–41 Berkeley Street, London W1J 8EW, which represented the combined subject property and 38 Stratton Street prior to their division in 2019. She indicated that this provided the most reliable rental evidence for valuing the subject property, although she emphasised the need for careful analysis. Reference was made to the Upper Tribunal case of *Ballcroft Estates Ltd. v. Virk (VO) [2022]*, which highlighted the importance of thoroughly analysing transactions, regardless of their complexity, to ensure the correct rateable value is determined.

35. I observed that, prior to the division of the subject property in 2019, it was held under a renewed lease from 24 June 2011 at a rent of £750,000 per annum, with a six-month rent-free period. A rent review on 24 June 2016 resulted in an increase to £800,000 per annum, which analysed to £523.39 per m² as of June 2011 and £611.90 per m² as of June 2016.

36. Mrs Rabbette stated that as the subject property formed part of the property to which the rent relates, in her opinion it should be the starting point when valuing the subject property. As the rent fell approximately 14 months post AVD, it did need to be toned back in order to reflect rental growth between the two. In order to do this, Mrs Rabbette had calculated the level of growth between the rent at commencement, being 2011 and that agreed at the 2016 rent review, where she considered the analysed rent ITMS for the subject property to be £589.16 per m².

37. Mrs Rabbette referred to the comparable property of 38 Stratton Street, which was of similar size. It had been subject to a well founded Challenge following which the overall rate had been reduced from £950 per m² to £620 per m². Therefore, Mrs Rabbette was of the opinion that, along with the aforementioned rental details, supported the contention that the subject property's assessment should be reduced to £620 per m² or if using Zone A value, to a rate of £1,215 per m².

38. Mr Tawonezvi had referred to three rental transactions. Two of these pertained to Bst (Pt)–Gnd Floor Unit 1, Lansdowne House, 24 Berkeley Street, and Gnd Flr, 52 Berkeley Street. The third concerned the Bst and Gnd Flr of 51 Berkeley Street, which was adjacent to 52 Berkeley Street. I noted that the comparable property of Grd Flr 52, Berkeley Street, which was situated in a highly prominent position just off the intersection with Piccadilly, opposite The Ritz. This property had been subject to a Challenge, where the Zone A rate had been reduced from £2,000 per m² to £1,800 per m². Given its prominence and proximity to Piccadilly and the superior location it occupied, I placed great weight onto the agreement details provided when making my decision.

39. I noted that the rental details provided by Mr Tawonezvi for the properties located on Berkeley Street, related to comparable properties that were considerably in a more prominent location within Berkeley Street. I considered that properties situated closer to Piccadilly along Berkeley Street would typically command higher rents than those located towards the centre of Berkeley Street.

40. I was referred to another comparable property of Bst-Gnd Flrs,13 Berkeley Street, London W1J 8DU, which was directly opposite the subject property. I noted that this comparable property was described as a showroom and premises with an overall space of 195.28 m². It had been valued on an overall basis at a rate of £605 per m².

41. Mr Tawonezvi referred to other comparable properties that were located opposite the subject property. These included: Gnd Flr Fnt Nth 10b Berkeley Street; Bst Fnt Sth & Gnd Flr 10a Berkeley Street; Bst & Gnd Flr 12 Berkeley Street and Bst & Gnd Flr 14 Berkeley Street. I noted that these properties had also been assessed at a Zone A rate of £1,500 per m².

42. I noted that the rental evidence was insufficient in making a determination. I was not convinced that the suggested Zone A rate by Mrs Rabbette of £1,200 per m² was warranted, as there were other properties situated on the opposite side of Berkeley Street, adjacent to the subject property that had been assessed at £1,500 per m². Taking into account the established tone combined with the agreement of Grd Flr 52, Berkeley Street, which I applied the most weight to, as well as the rate applied to Bst-Gnd Flrs,13 Berkley Street, which was directly opposite the subject property, convinced me that the current Zone A rate applied to the subject property of £1,500 per m² was excessive. Therefore, I determined that the correct Zone A rate for the subject property was £1,450 per m².

43. The valuation is as follows:

Floor	Description	Area m²	£ per m²	Value (£)
Ground	Retail Zone A	121.41	1,450	176,045
Ground	Retail Zone B	142.23	725	103,117
Ground	Retail Zone C	143.25	362.50	51,928
Ground	Remaining Retail Zone	46.01	181.25	8,339

Valuation sub-total	339,429
RV say	£337,500

Determination

44. In view of the above findings and conclusions, I found that the Zone A rate to be applied to the subject property should be £1,450 per m², which produced an assessment of £337,500 RV with effect from 8 July 2019 and 19 March 2021. Therefore, the appeals were allowed in part.

45. Accordingly, I order the Valuation Officer to reduce the 2017 Rating List entry for Gnd Flr 40-41, Berkeley Street, London W1J 8EW to £337,500 with effect from 8 July 2019 and 19 March 2021 within two weeks of the date of this order.

Right of further appeal

46. 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.

47. 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 A Crawford, Senior Member

1 October 2025

Clerk to the Tribunal: Ms R Muller
Date issued to the parties: 1 October 2025