VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List appeal: Local Government Finance Act 1988; deletion from the rating list; nature of works; end of lease works; material day; 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); appeal dismissed.

APPEAL NUMBER: CHG101153962

RE: 24-25 Hempstead Shopping Centre, Hempstead, Gillingham, Kent ME7 3PB (the "subject property")

BETWEEN:	British Airways Pension Trustees Limited	Appellant
	and	
	Andrew Mouland (Valuation Officer)	Respondent

SITTING: *remotely using Microsoft Teams*

ON: 7 April 2025

BEFORE: Mr A P S Crawford, Presiding Senior Member
Mr S C Kamalan, Senior Member

CLERK: Mrs A Sloan

APPEARANCES: Mr A Moore (Ryan Property Tax Servies Ltd, for the appellant)
Mr M Hussain (representing the Valuation Officer)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The panel found 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 10 November 2023 to challenge the entry in the 2017 Rating List entry of £98,500 with effect from 1 April 2017. The proposal sought a deletion of

this entry from the rating list with effect from 8 July 2021. The Valuation Officer (VO) did not find the proposal to be well founded, and a Challenge decision was issued on 12 September 2024 maintaining the existing entry in the rating list. An appeal against that decision was received by the Tribunal on 21 November 2024.

4. Mr Hussain stated that he was appearing in a dual role as both Advocate and Expert Witness for the respondent.

5. In view of the Upper Tribunal's judgment in *Gardiner & Theobold LLP v Jackson (VO)* [2018] UKUT 0253 (LC), Mr Moore declared that he was also appearing for the appellant as both Advocate and Expert Witness, and he was instructed under a conditional or other success-based fee arrangement. He confirmed that he understood his duty was to the Tribunal, regardless of whether the evidence supported his client's case.

6. The panel accepted Mr Moore's 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 Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 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). It was therefore appropriate for the panel hearing the evidence to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

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

Issue and Relevant Law

8. The issue before the panel was to determine whether the subject property should be deleted from the 2017 rating list with effect from 8 July 2021 as proposed by the appellant's agent.

9. 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 8 July 2021, this being the date the appellant had sought the 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 complied (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."

10. 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)
- *Porter (VO) v Trustees of Gladman Sipps* [2011] UKUT (LC) 204
- *Aviva Investors Property Developments Ltd and Another v Whitby (VO) and Mills (VO)* [2013] UKUT (LC) 0430
- *BNPPDS(J) Limited and BCI Limited (as Trustees of the Blackrock Industrial Trust) v Hitchings (VO)* [2025] UKUT 104 (LC)

Discussion

11. The subject property is a retail unit located in the Hempstead Shopping Centre in Gillingham, Kent. It is shown in the rating list as a shop and premises.

12. Prior to the material day, the subject property was occupied by Johnsons Cleaners UK Limited. The lease expired on 7 July 2021 and its terms required the leaseholder to restore the unit to its condition prior to being let when handing back to the landlord. On the material day, the property was vacant and the appellant's representative stated that all the tenant's fittings had been removed. Mr Moore contended that the unit was stripped back to a shell and its condition meant it was incapable of beneficial occupation and should be deleted from the rating list. He submitted that the dilapidation works carried out before the lease ended were the first stage of a scheme of works. The subject property was then let to a new tenant, the British Heart Foundation ("BHF") with effect from 1 March 2023 and work began to fit out the unit to the specification required. It was not clear from Mr Moore's submissions as to when any works that were undertaken by the previous tenant began or the duration of the same.

13. Mr Hussain disagreed with Mr Moore's opinion that the appeal property ceased to be a hereditament, after the previous tenant had vacated. He contended that any works it had undertaken were no more than the usual end of tenancy strip out works, customary for retail units to make the property ready for re-letting by the landlord. He contended that there was not one scheme of works involved but two: the end of tenancy works required by the terms of the lease in 2021 and then a separate scheme of works by the new tenant in 2023. He asked the panel to confirm the entry in the 2017 rating list.

14. As was usually the case, in this type of appeal, the proposal was not made immediately following the last tenant's vacation. Instead, it was delayed until after the new tenant had already re-fitted and occupied the property. This denied the respondent the opportunity to inspect and verify for themselves if the property remained a hereditament when it was unoccupied.

15. Given the difference in opinion between the two parties, the panel scrutinised the evidence closely in order to find facts. Mr Moore provided a copy of the dilapidations report and

photographs showing the subject property in what he submitted to be ‘shell condition.’ He contended that the works involved removal of all lighting, heating, small power distribution, glass frontage, suspended ceiling, flooring, and data/communications cabling.

16. It was clear from the schedule of dilapidations when the previous tenant’s bespoke fixtures and fittings were removed in their entirety but there appeared to be some elements remaining by the time that BHF had agreed to rent the property. For example, the previous tenant had installed a large amount of external extraction plant cowls and flues. The schedule of works, following the previous tenants vacation, required these to be removed and the roof deck be repaired/reinstated, but the landlord had made a £500 charge to remedy any failure in that part of the building. Internally, the schedule required the earlier tenant to remove trade goods, fittings, computer equipment, signage, suspended ceilings, partitioning, wall linings and hanging racks. These items were all marked as completed prior to the lease expiry. However, the removal of the sales counter and floor coverings at the front of the shop was not agreed and the landlord had made a charge of £600 to address this issue. This was not marked as completed prior to the lease expiry.

17. The dilapidation schedule stated the outgoing tenant was required to reinstate emergency lighting, and fire alarm and sprinkler installation to open plan configuration. Although the tenant’s comments indicated this work was completed prior to the lease ending, the work did not appear to be agreed by the landlord.

18. The panel then turned to the schedule of works for BHF, which detailed the alterations and fitting out of the unit. The unit was referred to as a shop. The lease for BHF, began on 1 March 2023 and its scheme of works to fit out the unit began on 28 March 2023. The works were completed on 5 June 2023 and the shop opened for trading on 18 July 2023.

19. The BHF schedule of works referred to the existing shop front having been stripped out and temporary hoarding installed but the appellant’s evidence was not conclusive that this had been done on the material day. The works included the installation of a new shop front, and the panel noted they also referenced stripping the unit back to a shell and disposing of any “loose furniture, fixtures and fittings on possession of the unit.” The schedule of works went on to reference a full strip out of the existing kitchen and toilets. The inclusion of references to stripping out in the BHF contractor’s schedule of works called into question Mr Moore’s submission that the unit was already in a shell state when the outgoing tenant’s lease had ended on the material day proposed for deletion. It suggested that some of the stripping out and replacement works were delayed until a new tenant was found.

20. As previously stated, Mr Moore supplied photographs of the subject property showing it in what appeared to be a shell state. However, the photographs were not dated and therefore the panel could not be confident that they were representative of the unit on the material day. Given the reference to stripping out and works identified for completion in the BHF schedule of works, the panel concluded that the vast majority of the strip out actually occurred between 1 March 2023, when BHF acquired the property, and 5 June 2023, when the works were completed before occupation from 18 July 2023.

21. The appellant’s representative had referred the panel to *Jackson (VO) v Canary Wharf Limited,* where an office was stripped out back to a shell and would only be refitted if and when a new tenant was found. He argued that this authority showed that a programme of stripping out works, followed by a later fitting out was accepted as being a continuous scheme of works with the strip out being the first stage. The panel was not persuaded that the situation in *Canary Wharf* was on all fours with the facts in the appeal before it in this

case. *Canary Wharf* concerned an office where it was the landlord's usual practice to strip out the space following the departure of a tenant to upgrade facilities before re-fitting to the specification of a new tenant. In the appeal before it, the panel was looking at a retail unit where the end of lease arrangements required the outgoing tenant to remove their equipment and fittings, reinstating the unit to pre-let condition. The panel was satisfied that the dilapidation work was a scheme of works, but it was not proven that the unit was stripped out completely by the material day for when the proposed deletion was sought.

22. Mr Moore contended that the strip out in this case was extensive and 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 dilapidation works in the subject appeal were more extensive than in the *Blackrock* case and the Upper Tribunal had found that in *Blackrock* the property should be deleted while undergoing works. The *Blackrock* judgment considered both *Canary Wharf* and the Supreme Court's decision in *Newbigin (VO) v Monk.*

23. The panel noted that both *Canary Wharf* and *Monk* concerned offices and therefore were not directly comparable to a retail 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 cost over £171k, over five times the rateable value of the warehouse, and lasted from November 2022 until McDonald's lease began in March 2023. In the subject appeal, the works to clear out the unit were a requirement of the lease to be fulfilled by the outgoing tenant and there were no costs to suggest anything other than the usual end of tenancy works to remedy disrepair.

24. 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;*

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

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

25. Having regard to the identified works that needed to be undertaken by contractors to facilitate BHF's occupation, the panel made a finding of fact that the appeal property was not stripped back to a shell on the material day, as contended by Mr Moore. BHF's contractors were instructed to remove all remaining previous tenant's fixtures and fittings before stripping back to a shell. As BHF did not become the tenant until 1 March 2023, the panel concluded that the strip out had not occurred on the material day of 8 July 2021.

26. Little weight was placed on Mr Moore's reference to the Upper Tribunal's decision in *Porter (VO) v Trustees of Gladman Sipps.* The *Gladman Sipps* case established that, in relation to a new hereditament, *"A building is only a hereditament if it is ready for occupation, and whether it is ready for occupation is to be assessed in the light of the purpose for which it is designed to be occupied."* This judgment was followed by *Aviva Investors Property Developments Ltd and Another v Whitby (VO) and Mills (VO),* which determined that newly erected warehouses

that had no small power distribution and no lighting were not ready for occupation and should not be entered into the rating list. It was argued that it could not be correct to delete new buildings from the list because they lacked facilities to make them ready for occupation but apply different rules to a hereditament already in the list.

27. The panel found that when assessing whether a new hereditament exists, it has to be complete and ready for occupation before its initial entry in the list, in the absence of a completion notice being served. However, when an established property has already been in the rating list and previously occupied, as was the case with the subject property, there is a statutory assumption around repairs. It is common for there to be disrepair issues at the end of a tenancy, whether they are repairs that the landlord must address before re-letting or, as in the subject appeal, the landlord requires the outgoing tenant to remove any bespoke equipment and restore the unit to pre-tenancy condition. It was at this point where the statutory assumptions became engaged. If Mr Moore was right, it would mean that the statutory assumptions served no purpose because every time a property was vacated by an outgoing tenant, at the end of their lease, the property normally required some repair work to render it ready for the next tenant's occupation. However, unless those repairs were uneconomical for the landlord to undertake, the rating hypothesis assumed that the landlord would undertake any work that was necessary for the property to be in a position to be re-let. In the real world, landlords often agreed a dilapidation costs schedule with the outgoing tenant to enable the landlord to do any repair works at the outgoing tenant's expense. For shop premises, it was customary for landlords to insist that their tenants remove their own branded fit out, so that the incoming tenant had a blank canvass with which to work on.

28. Moreover, a retailer taking on a unit would expect to undertake their own bespoke programme of works to fit out the space to their own branded specification. The panel noted that the BHF works began on 29 March 2023 and were completed by 5 June 2023, a time period of less than three months. 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 use remained a shop. 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.

Disposal

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

Date issued to parties: 1 May 2025

Right of further appeal

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.
