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

Case No: CHG101175605

Sitting remotely using Microsoft Teams

Date: 3 November 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

2023 Rating List Appeal: Local Government Finance Act 1988; Showroom and Premises; Correct main space rate to be applied; Mode and Category of Occupation; Appeal allowed in part.

Before:
MS LS MARSHALL
MR J THOMAS

Between:

WHITE PENNANT LTD — **Appellant**

- and -

LUCY FORMELA-OSBOURNE (VALUATION OFFICER) — **Respondent**

Regarding:
16-18 HARBORNE ROAD, BIRMINGHAM, B15 3AA
(the "subject property")

Mr J Davies, from Newmark Gerald Eve LLP, representing the Appellant
Mr G Green, representing the Respondent

Hearing date: 10 October 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part.

2. The Tribunal found the subject property's existing assessment of £108,000 Rateable Value (RV) was unreasonable and reduced it to £101,000, with effect from 1 April 2023.

Introduction

3. This appeal had been brought in respect of the following: 16-18 Harborne Road, Birmingham, B3 2HB which was entered in the 2023 Rating List as Showroom and Premises at £108,000 Rateable Value (RV), with effect from 1 April 2023.

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

5. The appellant's challenge to the Valuation Officer (VO) was made on 19 January 2024. The appeal to this Tribunal was made on 28 May 2025, following the VO's decision notice of 29 January 2025, that the subject property's Rateable Value would remain unaltered. The material day in this appeal is 1 April 2023.

6. Mr Green stated that he was appearing in a dual role as both advocate and expert witness for the respondent.

7. Mr Davies was appearing on behalf of the appellant as 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 Mr Davies' 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). He confirmed that he was not representing the appellant at the hearing on a contingency fee basis, declaring that he understood and accepted that his duty was to the Tribunal in giving his evidence and 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 have accepted this on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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). The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

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

Background

10. The subject property had a description in the rating list as a showroom and premises. The respondent stated that whilst described as showroom and premises it is valued in line with the other offices in the locality, adding that the subject property is a converted office of traditional brick and tile construction over three floors, located approximately 1.5 miles from Birmingham City Centre.

11. The subject property is valued within Valuation Scheme 635762, which is applicable to period offices in Edgbaston, Birmingham, which the appellant disputes, asserting that it should be valued as a retail hereditament. The appellant stated 16-18 Harborne Road, Birmingham was reconstituted in the 2017 Rating List, effective from 22 September 2017 following a change of use at ground floor number 16 from office to retail and change of use of the first floors at 16 and 18 from office to ancillary display and showroom.

12. The issue to be determined was the correct valuation to be applied to the subject property's assessment. The VO was defending the current entry, which valued the appeal property in line with other offices and premises in the locality. In contrast, the appellant contended that the subject property as a showroom and premises, should be valued as a retail property on an overall basis.

13. The appellant sought a reduction in the RV of the subject property from £108,000 to £90,500 based on a main space rate of £125/m^2, contending that the current main space rate of £150/m^2 was excessive. The respondent maintained that the existing RV of £108,000 was fair and reasonable.

Relevant Law

14. When arriving at its decision, the panel is governed by rating legislation laid down by Parliament. Schedule 6 to the Local Government Finance Act 1988, as amended by section 1(2) of the Rating (Valuation) Act 1999, defines the Rateable Value of a non-domestic property as the amount equal to the rent at which it is estimated the property might reasonably be expected to let on a year to year basis 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 the 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.

15. 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 2020 (SI 2020 No. 832). In respect of this appeal the material day is 1 April 2023.

Discussion

16. In this appeal, the panel had to determine whether the existing RV of £108,000 was excessive, or if it was fair and reasonable. This required the panel to have consideration to two linked issues, these being the mode and category of occupation of the subject property as at the material date of 1 April 2023, and the main space rate on which the £108,000 RV had been calculated.

17. In the 2023 Rating List, the subject property was described as a showroom and premises, with its existing assessment of £108,000 based on it being valued in line with other offices and premises in the locality, with effect from 1 April 2023. The VO was defending this current valuation. The appellant disputed this current assessment arguing that the subject property should be valued taking into account the correct mode and category of occupation, and as a showroom and premises, the appellant contended it should be valued in line with other retail premises within the locality, on an overall basis, rather than a zoned basis.

18. The appellant's amended valuation included an overall value of £125/m^2, which equated to an assessment of £90,500 RV. Mr Davies contended that the description in the Rating List for the subject property had always been as showroom and premises. With this in mind he reiterated that it should be valued in line with similar retail properties in the locality, as well as asserting that its assessment should take into account the rent of the subject property itself.

19. The panel was aware that the Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. This case had established six propositions that gave clear guidance to be followed when assessing rateable value. Bearing these six propositions in mind, the panel acknowledged that the rent on the subject property, where available, was considered to be the correct starting point and consideration to how that rent compared to the statutory definition of rateable value. The rents on similar properties were also considered and assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

20. The appellant referred to the rent of the subject property as the starting point. There were two rents of the subject property, both remote from the AVD. The earlier of these rents was a new letting effective from 9 February 2017, with a headline rent of £112,000 for a term of 15 years. The respondent had analysed this rent at £147.61/m^2. With regard to this rent, there was varying information provided about the review and break clause periods, and rent free periods, with scant information provided about fit out costs, with the panel noting that any increases at future reviews were stated to be index linked and capped at 3%. The latter agreement was via the landlord and tenant agreeing a reduction in the rent in a Deed of Variation dated 9 August 2023 effective from 9 February 2024 for a term of 5 years, stated to have a headline rent of £90,000. The respondent, when taking into account different factors, analysed this latter rent at amounts of £124.30/m^2 and £136.36/m^2. The appellant, with regard to both the 2017 and 2023 rents stated that they did not analyse over £131/m^2, which was well below the main space rate of £150/m^2.

21. In support of the appeal, Mr Davies also submitted evidence in respect of 20-22 Harborne Road, the property neighbouring the subject property, which was stated for all intents and purposes to be identical. The description in the Rating List for 20-22 Harborne Road was 'offices and premises' with its assessment calculated on a main space rate of £150/m^2. This was said to be under dispute, with the property being used for retail purposes, selling high end furniture. Its original new letting was stated to have been agreed on 8 December 2016 with a headline rent of £110,000 for a term of 10 years, with a 2-year rent-free period. There was stated to have been a Deed of Variation agreed in July 2019 which saw the tenant relinquish their 5 year break option in exchange for an extended rent-free period. The appellant had provided information about the rents due for each year from December 2021, with the most common and highest annual rent, from years 6 to 10, being £127,800. The latter Deed of Variation rent, agreed 21 months prior to the AVD, had been analysed by the parties at amounts of £101.37/m^2, £101.86/m^2, and £132.31/m^2. The respondent commented that any rent increase for this property was linked to inflation and not a true open market rent.

22. The respondent did not consider the appellant's evidence should carry weight, on the basis that the rents in respect of the subject property were too distant from the AVD, with elements signifying they were not of true open market value. Furthermore, it was stated that the rents of the neighbouring property were of limited use as they did not show a difference between its rent and that of the subject property. Instead, the VO's opinion remained that the subject property is a typical converted period office being used as a showroom and on the basis that all properties are valued vacant to let, the subject property would be let as an office in line with other properties in the locality of a similar nature. It was contended by the respondent that if the items displayed in the subject property were to be removed it could easily be converted into an office. On these grounds, the respondent submitted evidence of four comparable properties, which were stated to provide more reliable rental evidence to help attribute a rateable value to the subject property.

23. The evidence submitted by the respondent comprised rental evidence in respect of four offices and premises within the locality, as well as information pertaining to two other properties described as shop and premises stated to be comparable to the subject property. The shop and premises properties, both on Morrisons Retail Park, were not considered to be comparable, with no weight attached to them by the panel.

24. Turning to the rental evidence of the four offices and premises, the panel noted that Mr Green commented that 30 Harborne Road was not wholly comparable and should be afforded low weight, adding that the rent for 9 Greenfield Crescent, which analysed at £152.62/m^2, as a rent review, be afforded less weight than the other two remaining rents submitted for comparable properties. The rent which the respondent stated to be the best evidence was in respect of 19 Highfield Road, located within a few minutes walking distance from the subject property. The rent was agreed via a lease renewal agreed in February 2021, two months prior to the AVD, for a term of 5 years and analysed at £150.71/m^2. The rent for Part First Floor, 4 Vicarage Road, another lease renewal, agreed seven months post AVD, analysed at £162.53/m^2, which supported the current main space rate of £150/m^2. This property was located the furthest away from the subject property, with the rent based on one floor only, unlike the three floor subject property, with Mr Green requesting moderate weight be attached to this rental evidence.

25. When arriving at a decision, the panel considered the rental and assessment evidence of the subject and the comparable properties. Consideration was also given to the issue of mode or category of occupation. The panel had to consider the appeal property physically as it stood or *rebus sic stantibus*. Therefore, one had to look at the premises 'vacant and to let'. The panel was aware that it had to have regard to the appeal property *rebus sic stantibus* (as it stood) and had regard to the Court of Appeal decision of *Scottish & Newcastle Retails v Williams (VO)* [2001] EWCA Civ 185. 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 Valuation Officer; the premises were valued as public houses and premises.'

26. The panel 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 (1 April 2023). The only alterations permitted were minor

alterations of a non-structural character. 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 appeal property's actual use place it on the material day.

27. In this appeal, the panel had not been presented with any evidence to suggest there had been any major physical changes to the premises, with an absence of evidence about any fit out costs involved when the appellant took on the lease for the subject property. The panel was faced with having to rely on written and verbal statements from the parties. The respondent stated the subject property was a former residential property that was converted into an office and being used as a showroom. Mr Green remained of the opinion that whilst the description was as a showroom and premises, the property should remain to be valued in line with other comparable offices in the area, as it was included within a Valuation Scheme for period offices, which he did not consider to be incorrect. If vacant to let, he stated the subject property is an office and not typical of a retail property. He added that although the current occupier may use the premises as a showroom, the photographic evidence did not show the property should be valued as a shop, stating that if the goods were removed and replaced with desks, chairs and the like, it would appear as an office. Referring to the decision in the *Scottish & Newcastle* case he stated that planning permission did not determine how a property should be valued for rating purposes, highlighting that the description in the rating list of the neighbouring property at 20-22 Harborne Road was as offices and premises.

28. Conversely, the appellant contended that the property, entered into the rating list as a showroom and premises, would require more than just minor changes to be an office and premises. Mr Davies stated that he was valuing with the rebus sic stantibus rule in mind, concluding that the property is a retail showroom, open to the public, and not an office. As a showroom and premises, he stated its value should indicate a differential to the value of offices and premises. To change it to an office would require changes to a number of facilities, stating that if used as offices and premises, it would be necessary for a number of lavatory and washroom amenities to be installed, which was significant.

29. In reaching its decision regarding the rental evidence submitted by the respondent, the panel concluded that the only comparable evidence carrying significant weight was the property at 19 Highfield Road. Its rent, analysed at £150.71/m², closely aligned with the current main space rate, which was considered persuasive. The panel also found no evidence that substantial physical alterations had been made to convert the premises into a showroom, nor that major changes would be necessary to revert it to office use if it became vacant. Although the panel did not accept that the property could only be occupied for the same category of use as on the material day, it acknowledged that converting it back to offices would involve work of some substance, even if not major, and this should not be disregarded. The appellant argued that valuing a property at a rent never agreed between parties was problematic. Taking into account the principles in *Lotus v Delta*, the panel recognised the appellant's concerns and determined that some consideration should be given to the appellant's' evidence. While the rental evidence for the subject property was remote from the AVD, the rent for 20–22 Harborne Road deserved some weight, having been analysed between £101.37/m² and £132.31/m². Ultimately, the panel adopted a “stand back and look” approach. After reviewing all submissions and evidence, it concluded that a main space rate of £140/m² was fair and reasonable.

Determination

30. In view of the above findings and conclusions, the panel decided that the current assessment was unreasonable. The panel determined that an assessment of £101,000 RV more accurately reflected the appeal property. A breakdown of the assessment is shown below. The appeal is allowed in part.

Ref	Floor	Description	Area m^2	£/m^2	Relativity	Value (£)
1.1	Ground	Showroom	289.31	140.00	1.0	40,503.40
1.2	Ground	Internal Storage	12.70	140.00	0.7	1,244.60
1.3	Ground	Public toilets	3.64	140.00	1.0	509.60
1.4	First	Showroom	23.99	140.00	1.0	3,358.60
1.5	First	Showroom	17.86	140.00	1.0	2,500.40
1.6	First	Showroom	5.88	140.00	1.0	823.20
1.7	First	Public toilets	12.06	140.00	1.0	1,688.40
1.8	First	Showroom	23.07	140.00	1.0	3,229.80
1.9	First	Showroom	16.73	140.00	1.0	2,342.20
1.10	First	Showroom	90.34	140.00	1.0	12,647.60
1.11	First	Showroom	22.18	140.00	1.0	3,105.20
1.12	Second	Showroom	20.36	140.00	1.0	2,850.40
1.13	Second	Showroom	16.5	140.00	1.0	2,310.00
1.14	Second	Showroom	154.07	140.00	1.0	21,569.80
1.15	Second	Showroom	19.15	140.00	1.0	2,681.00
			Valuation Sub Total			101,364.20
	Say £101,000 Rateable Value, with effect from 1 April 2023					

Order

31. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to alter the list entry for the appeal property to £101, 000 RV with effect from 1 April 2023. The Valuation Officer must comply with this Order within 2 weeks of its making.

32. The Appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

Right of further appeal

33. 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.

34. 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 LS Marshall, Senior Member (Presiding)
Mr J Thomas, Senior Member

3 November 2025

Mr R Patel
Clerk to the Tribunal
Date issued to the parties: 3 November 2025