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

Case No: CHG101175883

Sitting remotely using Microsoft Teams

Date: 23 May 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

2017 Rating list appeal— Local Government Finance Act 1988 — Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Garden Centre and premises; main space price; appeal allowed in part

Before:
MR N DE FREITAS
MR SM HOOBERMAN

Between:

MARC DUMMETT — **Appellant**

- and -

Lucy Formela-Osbourne
(VALUATION OFFICER) — **Respondent**

Regarding:
Newquay Garden Centre, Garden Way, Newquay TR8 4LG
(the "appeal property")

Mr P Ray for **Rabbette Chartered Surveyors**
Mr G Buckmaster for the **Respondent**

Hearing date: 28 April 2025 11:45

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part.

2. We find that the main space price should be reduced to £25/m^2. The resultant rateable value (RV) was £55,500.

Introduction

3. The appellant had made a challenge against the accuracy of the compiled list assessment in the 2017 Rating List, by way of a proposal that he served on the Valuation Officer (VO) on 22 January 2024. After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was well founded and agreed to reduce the assessment from £72,000 RV to £61,000. A decision notice to this effect was served on the appellant on 7 October 2024. His representatives then appealed the VO's decision to the Tribunal on 13 November 2024, on the grounds that the current valuation for the hereditament was not reasonable, under regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

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

Background

5. The appeal property was a garden centre and premises, which included glasshouses, restaurant, kitchen, display areas and an office with an agreed total area of 3,752m^2. It had undergone significant improvements which had resulted in the VO increasing the RV from £15,500 to £61,000.

6. As Mr Ray appeared on behalf of the appellant as both advocate and expert witness, the clerk asked 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).

7. He declared that he was instructed under a fixed fee arrangement in his role as both advocate and expert witness. Mr Ray confirmed that he understood and accepted that his duty was to the Tribunal in giving his evidence and he 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 accepted this expert witness evidence 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).

9. Mr Buckmaster confirmed that he was representing the VO as advocate and expert witness.

10. The issue in dispute before the panel was the correct tone of value to be applied to the appeal property. Mr Ray sought a reduced entry of £49,500 RV from 1 October 2020 based on an unadjusted of value of £25/m^2. Mr Ray was also seeking an allowance due to a

number of disabilities such as complaints from neighbours, reduced access and narrow car park and a sloping site.

11. However, Mr Buckmaster defended the VO's assessment of £61,000 RV based on a tone of value of £27.50/m².

12. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included the parties comparable assessments, skeleton arguments, location maps and internal and external photographs of the appeal property.

Relevant Law

13. The term 'rateable value' is defined in 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 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; and
>
> 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".

Discussion

14. In accordance with the authoritative guidance in Lotus & Delta v Culverwell (VO) and Leicester City Council [1976] RA141, the rent on the appeal property is considered to be the correct starting point but, where available, rents on similar properties are also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence can then be weighted. However, the appeal property was owned by the appellant, along with garden centres in general. Therefore, there was no rental evidence.

15. Due to the lack of rental evidence, to value garden centres they are placed in categories 1 to 6 depending on the turnover. The appeal property had been placed in category 3 which was for those assessments which had turnover between £750,000 to £1.5m. Within that category, the main space price varies from £25/m^2 to £35/m^2. The values would be dependent on matters such as turnover, location and construction.

16. Mr Ray had also presented a number of arguments about the VO's use of the turnover for the appeal property which, since 2021, had exceeded £2m and would place the appeal property in category 4. However, the VO was satisfied that the appeal property should be placed in

category 3. Mr Buckmaster had not suggested that it would fall within category 4. As stated above, category 3 was for assessments which had turnover between £750,000 to £1.5m. Mr Ray had not argued that the turnover was below £750,000 and therefore, as no arguments were presented to suggest that the appeal property should be placed in any alternative category, the panel was satisfied that the appeal property fell within category 3.

17. Turning to the values within category 3 (main space price values from £25/m^2 to £35/m^2) the panel applied significant weight to Mr Ray's argument that there were a number of garden centres in Cornwall that had been valued at £25/m^2 such as Wyevale Garden Centre which was part of a national chain and Duchy of Cornwall nurseries, both of which he considered were more superior than the appeal property, in terms of location, access and quality of the buildings. He had also identified some, such as Merry Harriers Nursery which had been valued on an unadjusted main space price of £17.50/m^2, which he also considered to be far superior, in terms of quality of the building, than the appeal property. The photographs of the comparable properties, together with the aerial photographs, further supported this argument.

18. Mr Buckmaster contended that the comparable properties identified by Mr Ray which had a main space price of £25/m^2 had been wrongly valued. He referred to the judgment of Ladies Hosiery v West Middlesex Assessment Committee [1932] RA 679. Scrutton L.J. at p.p. 686-688 which stressed the "vital principle" of rating law that "each hereditament should be independently assessed" and that correctness should not be sacrificed to ensure uniformity so as to "obtain uniformity by correcting inaccuracies".

19. However, the panel applied less weight to Mr Buckmaster's contentions that those assessments referred to by Mr Ray had been wrongly valued. Whilst the panel understood that the 2017 rating list was closed and therefore the assessments cannot now be amended, the VO's response to the challenge failed to state that any of the appellant's comparable properties had been incorrectly valued and no evidence had been presented to the panel to demonstrate that those assessments were incorrect, other than Mr Buckmaster's verbal testimony during the hearing.

20. Given that Mr Ray had presented a number of superior assessments that were valued on an unadjusted main space price of £25/m^2, the panel concluded that the appeal property should also be valued at £25/m^2.

21. Having established that the appeal property should be valued on an unadjusted main space price of £25/m^2, the panel then considered Mr Ray's other argument that a 10% allowance should be allowed due to a number of disabilities. Whilst the photographs showed that the car park at the appeal property was narrow and the location map and photographs showed that there were domestic properties in close location, no evidence had been presented to the panel to demonstrate that this affected the appeal property such as there being restrictions to, or, having to arrange staggered deliveries. Mr Ray had verbally argued that there were a couple of occupants of nearby properties who had objected to and subsequently complained about the improvements to the appeal property. But, the panel concluded this was not unusual where there have been changes to the locality. Mr Ray had not presented any evidence to the panel where an allowance had been awarded where, quite simply, some neighbours had objected to the redevelopment and improvements to a property. Ultimately, the recourse for the neighbours would be to ask for their council tax banding to be reviewed.

22. Mr Ray had also argued that the appeal property was located on a sloping site which made it difficult for disabled people. However, the panel was not persuaded by the internal

photographs which Mr Ray included within the evidence bundle as these did not demonstrate that the slope was sufficiently steep as to prohibit anyone disabled looking around all of the appeal property. The panel also applied significant weight to Mr Buckmaster's verbal testimony that he had visited the appeal property and verbally confirmed that the sloping site was not noticeable. Furthermore, he also contended that, as the valuation was initially derived from the turnover, any disadvantages which would restrict or reduce the number of visitors to the appeal property would be reflected in a lower turnover and therefore by awarding an allowance this was double counting for any disability.

Determination

23. Given the above, the panel concluded that that appeal property should be valued at £25/m^2. However, for the reasons stated above, the panel was not persuaded that any allowance for the perceived disabilities should be allowed. The appeal was therefore allowed in part but only to the extent that the main space price should be £25/m^2.

24. The Valuation is as follows:

Floor	Description	Area	Rate/£	Value
Ground	Glasshouse	417.70	25.00	10,442.50
Ground	Glasshouse	401.12	25.00	10,028.00
Ground	Glasshouse	332.28	25.00	8,307.00
Ground	Internal storage	55.47	10.00	554.70
Ground	Restaurant	257.08	25.00	6,427.00
Ground	Kitchen	59.92	25.00	1,498.00
Ground	Office	52.25	25.00	1,306.25
Ground	Canopy	215.59	12.50	2,694.88
Ground	Canopy	189.45	7.50	1,420.88
Ground	Office	18.06	25.00	451.50
Ground	Glasshouse	126.02	25.00	3,150.50
Ground	Outdoor sales display	755.31	5.00	3,776.55
Ground	External storage	150.81	7.5	1,121.08
Ground	Canopy	38.34	12.50	479.25
Ground	Outdoor sales display	422.29	3.75	1,583.59
Ground	External storage	85.48	10	854.80
Ground	Mess/Staff room	17.23	18.75	323.06
Ground	Canopy	41.16	12.50	514.50
Ground	Outdoor display/seating area	116.61	5.00	583.05
		Sub total		55,527.08
	Car parking	81	0	0
		Rateable value say		55,500.00

Order

25. Under the provisions of regulation 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to reduce the entry in the rating list to rateable value £55,500 with effect from 1 October 2020.

26. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Right of further appeal

27. 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.

28. 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 N De Freitas, Senior Member

Mr SM Hooberman, Member

23 May 2025

Clerk to the Tribunal
Date issued to the parties: 23 May 2025