IN THE VALUATION TRIBUNAL FOR ENGLAND
IN THE MATTER OF TWO 2017 RATING LIST APPEALS

Case Nos: CHG101252120 and CHG101188665

Sitting remotely using Microsoft Teams on 23 March 2026

Date: 21 April 2026

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

RATING — Local Government Finance Act 1988 — Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141 — workshop and premises — main space price — appeals allowed in part

Before:

MR A HETHERTON
MS S KINSELLA

Between:

B.S.B. ENGINEERING SERVICES LIMITED **Appellant**

- and -

ANDREW MOULAND (VALUATION OFFICER) **Respondent**

Regarding:

UNITS 56 & 57 TRINITY TRADE CENTRE, MILL WAY, SITTINGBOURNE ME10 2PD
(the "subject property")

Mr Joseph Whyman for **Ryan Property Tax Services Ltd** for the Appellant
Miss Anna Herring for the **Respondent**

DECISION AND STATEMENT OF REASONS

DECISION

1. The appeals are allowed-in-part.

2. The Tribunal finds the unadjusted main space price should be reduced to £63.00/m^2. The resultant rateable value (RV) was £235,000.

STATEMENT OF REASONS

Introduction

3. The appellant had made two challenges against the accuracy of the compiled list assessments in the 2017 Rating List, by way of proposals that he served on the Valuation Officer (VO) on 29 February 2024. After considering the proposals and evidence submitted during the challenge period, the VO decided that the proposals were not well founded. Decision notices to this effect were served on the appellant on 30 June 2025. His representatives then appealed the VO's decision to the Tribunal on 17 October 2025, 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 workshop and premises with an agreed total area of 4800.80m² (3,256m² ITMS), built in 1977. The appeal property was located close to the M2 motorway and it comprised of workshops, offices and toilets on the ground floor with a mezzanine floor also containing offices, a workshop and a staff room. It was held on two ten year leases, one for each unit at a combined passing rent of £183,981 commencing in 2013. The two passing rents were combined into one passing rent at the five year rent review. The combined passing rent for the subject property was £232,000 effective from 14 April 2018.

6. The second proposal was submitted as a protective appeal following the VO reviewing the RV and increasing it as a result of adding hard surfaced land to the assessment. However, the VO conceded that matter and the RV returned back to £239,000 effective from 5 August 2022.

7. As Mr Wyndam 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) dated 3 August 2018.

8. He verbally declared that he was instructed under a contingency fee arrangement in his role as both advocate and expert witness. Mr Wyndham 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.

9. 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[1] 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).

10. Miss Herring confirmed that she was representing the VO as advocate and expert witness.

11. It was noted that neither party provided a Statement of Truth and signed declaration included within the bundle as would be required by the Royal Institution of Chartered Surveyors (RICS) practice statement and guidance note - Surveyors acting as expert witnesses 4th edition and would be required in normal circumstances from both parties. The panel accepted the verbal declaration made by both parties at the hearing.

12. The issue in dispute before the panel was the correct tone of value to be applied to the appeal property. Mr Wyndham originally sought a reduced entry of £161,000 RV from 1 April 2017 based on an unadjusted value of £45/m². However, on reflection, he thought that a revised entry of £176,000 RV from 1 April 2017 based on an unadjusted value of £47.50/m² was more realistic.

13. However, Miss Herring defended the VO's assessment of £239,000 RV based on a tone of value of £64.49/m².

14. The evidence bundles before the panel comprised all of the evidence disclosed and exchanged during challenge which included the parties' comparable assessments, skeleton arguments, an external photograph of the subject property and arial photographs of Mr Wyndham's comparable properties.

<u>*Preliminary issue*</u>

15. There was a preliminary matter in that Miss Herring raised a preliminary matter regarding the capital expenditure incurred by the tenant. She contended that the tenant had recorded within the Form of Return (FOR) a sum of £750,000 which was paid in respect of fit-out works. However, despite repeated requests, the appellant's representative had not provided any breakdown to clearly identify which elements are rateable.

16. However, through questioning, the panel established that the VO had not served a formal notice requesting this information.

17. Mr Wyndham had only recently been given the appeal to present at this Tribunal and therefore he was unable to give any reasons for the request not being replied to, although given that the appellant had vacated the subject property at the end of the lease (2023), he was now unable to obtain this information, although, the panel concluded that he must have been instructed by his client to act on their behalf and therefore, this information could have been obtained.

18. The panel therefore considered this matter in light of the Upper Tribunal decision in *Simpsons Malt Ltd and Other v Jones* (VO) UKUT [2017] 460 dated 4 December 2017 and had regard to *Denton v TH White Ltd* [2014] 1 WLR 3926 dated 4 July 2014 which

[1] The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No2269]

dealt with the non-compliance to directions. This laid out the three-stage test ‘Denton test’ which the panel had to consider.

Stage 1 – If panels conclude that the breach is not serious or significant then relief from sanctions should usually be granted (para. 53).

Stage 2 – Then the panel need to consider why the failure or default occurred. The burden is on the defaulting party to persuade the tribunal to grant relief. They must explain what happened and why. Illness or accidents are good reasons but overlooking a deadline is not (para. 54).

Stage 3 - The panel must consider all the circumstances of the case including:

a) the need for litigation to be conducted efficiently and at a proportionate cost;
b) a failure to grant a sanction may leave an inaccuracy being uncorrected; and
c) the need to enforce compliance with rules, directions and orders (para. 55); However, such matters must never be allowed to assume a greater importance than doing justice (para. 56).

19. The panel had regard to the Tribunals’ consolidated practice statement which states that the overriding objective of the Tribunal is to deal with cases fairly and justly. In doing so it will amongst other things:

a) deal with appeals proportionately to the importance of the case, the complexity of the issues, the costs of the case and the resources of the parties including the Tribunal;
b) avoid unnecessary formality and be flexible in the proceedings;
c) deal with the parties fairly allowing them to participate so far as is practical in the proceedings;
d) use the special expertise of the Tribunal effectively; and
e) avoid delay, so far as it is compatible with the proper consideration of the issues.

20. Having been convened to hear the appeal and bring it to a conclusion, the panel was disappointed that there was this issue as it would appear that following the VO’s request, both parties had then left the matter until the appeal had been listed for a hearing. However, the panel concluded that there would be little benefit in adjourning the appeal as it seems like this information would not be able to be obtained.

21. The panel therefore decided to hear the VO’s argument in respect of the fit out costs and Mr Wyndham to give a verbal response to it.

Relevant Law

22. 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

23. In the appeal under consideration, firstly, the panel analysed the competing evidence having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141 dated 20 May 1976. The rent on the subject 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.

24. The panel was cautious as to the reliability of the rent on the subject property. The lease commenced in 2013, which was two years before the Antecedent Valuation Date (AVD) and related to two separate units and required some adjustment not only for the fact that this related to two separate leases, but, there was also the question of what if any adjustment was needed for the sum of £729,000 and, the question as to whether this related to fitting out.

25. The panel noted that rent reviews were also unreliable as they do not fulfil one of the rating hypothesis as "a new tenant coming fresh to the scheme". Furthermore, as the rent review was in 2018 this was three years post AVD which made the rent review less reliable. In the judgment of *Flight Centre (UK) limited v Ricketts (VO)* [2021] UKUT 0315 (LC) dated 19 October 2021, Mr Higgin FRICS FIRRV, the Upper Tribunal member, applied less weight to rents after the AVD.

26. To further support his argument, Mr Wyndham had referred to six comparable properties where the main space price had been reduced down to between £32.00/m^2 to £47.50/m^2. As the 2017 rating list was closed, he argued that this was the tone of the list and therefore supported his reduction to the main space price of £45/m^2.

27. However, Miss Herring contended that the comparable properties, as identified by Mr Wyndham's tonal evidence, had been wrongly valued. She referred to the judgment of Ladies Hosiery v West Middlesex Assessment Committee [1932] RA 679. Scrutton L.J. at p.p. 686-688 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". During questioning, she contended that one of them had been reduced, (albeit now incorrectly) using an incorrect FOR. The VO subsequently reduced the other assessments on the back of the original incorrectly reduced assessment.

28. The panel was disappointed that this had not been raised earlier in the process as the VO's response to the challenge failed to state that any of the appellant's comparable properties had been incorrectly reduced and no evidence had been presented to the panel to demonstrate that those assessments were incorrect, other than Miss Herring's verbal testimony during the hearing. But, the panel understood that as the 2017 rating list was closed and therefore the assessments cannot now be amended for that rating list, although Miss Herring had confirmed that they have now been corrected for the 2023 rating list.

29. Mr Wyndham had also presented a number of assessments which were a similar age as the subject property. However, the panel applied less weight to the assessments for the following reasons:

   a) Gateway Centre was built in 2003 and therefore not a similar age;
   b) 7A to 7G Eurolink Industrial Estate was substantially larger with an area of 7,647m^2; and
   c) Unit 5 Dolphin Park was smaller at 2,845.18m^2.

30. The panel also concluded that they were not reliable to determine the RV for the subject property as they were all in a different VO scheme and different locations.

31. To support her contentions that the main space price was correct, the VO had presented six comparable properties that were all within the Trinity Trade Centre scheme. However, the panel were also disappointed by some of them as they were all smaller than the subject property, with three of them having an area of less than 1,000m^2.

32. The importance of comparing 'like for like' properties is that properties that are larger will benefit from a quantum allowance. This was demonstrated by the VO's verbal testimony as Miss Herring confirmed that properties with an area up to 500m^2 were valued at £85/m^2, for those that were between 500m^2 to 3,000m^2 were valued at £70/m^2 and those with an area between 3,000m^2 to 5,000m^2 were valued between £45/m^2 to £60/m^2.

33. Given the above, the panel concluded that the subject property was valued at too high a level when compared to the other units at Trinity Centre. Furthermore, taking account of the information relating on the subject property, which required adjustment between the letting date and the AVD, adjustment was needed between the analysed headline rent when let in April 2013 and some adjustment for the question of possible fitting out. On balance therefore the panel concluded a rate of £63.00/m^2 should be adopted to which that the agreed 5% allowance for the split site is applied. This was based on the agreement presented by both parties and applied in the 2023 Rating List.

34. By calculating the main space price by using this calculation, the main space price still falls within the VO's scheme.

Conclusion

35. In view of the above findings and conclusions, the Tribunal is satisfied that the main space price for the subject property should be £63.00/m^2 with the resultant RV of £235,000 rounded down. The appeals were therefore allowed in part.

36. The Valuation is as follows:

Floor	Description	Area	Rate/£	Value
Ground	Office	342.94	75.60	25,926
Mezzanine	Office	349.94	69.30	24,251
Ground	Staff toilets	56.58	63.00	3,565
Mezzanine	Mess/staff room	56.58	63.00	3,565
Ground	Workshop	1661.21	61.43	102,048
Ground	Area under supported floor	1137.72	44.10	50,173
Mezzanine	Workshop	1137.72	31.50	35,838
Ground	External storage	58.11	44.10	2,563
			Total	247,929
	Divided Unit		-5%	-12,396
			Total	235,533
			Rateable value say	235,000

Order

37. 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 entries in the rating list to rateable value £235,000 with effect from 1 April 2017.

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

Refund of appeal fees

38. As the grounds of the appeals have been made out, a refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision.

Right of further appeal

39. 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.

40. 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 Hetherton, Senior Member (Chair)
Ms S Kinsella, Senior Member
21 April 2026

Mr Richard Gath IRRV (Hons)
Clerk to the Tribunal
Date issued to the parties: 21 April 2026