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

Case No: CHG101252300

Sitting remotely using Microsoft Teams

Date: 19 February 2026

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

RATING; Local Government Finance Act 1988; Factory and premises; request for one assessment to be split into six separate entries; identity of the rateable occupier; paramount occupation; appeal dismissed.

Before:
MRS N CARMAN
MS L A OWUSU-AFRIYIE

Between:

JAMIE ELLIOTT **Appellant**

- and -

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

Regarding:
JAILMAKE, BRAESIDE WORKS, FROME, BA11 1EA
(the "subject property")

The Appellant, the Appellant in person
Ms L Inglis (instructed by HMRC Legal Group) counsel for the **Respondent**

Hearing date: 23 January 2026

DECISION AND STATEMENT OF REASONS

DECISION

1. The appeal is dismissed.

2. The Tribunal panel made no amendment to the number of entries in the rating list and concluded that one entry should remain effective from 13 November 2020.

STATEMENT OF REASONS

Introduction

3. This was a 2017 rating list appeal arising from a proposal made by the Appellant's representative in respect of the subject property's entry in the rating list at £36,750 RV as 'factory and premises' effective from 13 November 2020. The Appellant sought a split of the subject property into six separate hereditaments with effect from 1 December 2021. After considering the merits of the challenge, the Valuation Officer (VO) determined that it was not well founded and a decision notice to this effect was issued. The subject property remains one entry in the rating list.

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

Background

5. The appeal property is located on an industrial site containing several industrial buildings of varying ages and conditions, which the Appellant believes were constructed between the 1920s and 1970s. The Appellant purchased the site in 2020. It had previously been occupied as a single hereditament by the former owner, who had vacated the premises some time before the purchase. The Appellant now occupies Unit 1, with the remaining five units separately occupied from 1 December 2021.

6. The Appellant did not challenge the overall rateable value but the unit of assessment only. He argued that the subject property should be split into six separate entries in the rating list.

7. The Respondent argued that the Appellant was in paramount occupation of the whole site and on that basis, the assessment could not be split.

8. The evidence submission before the panel comprised of all the evidence disclosed and exchanged during challenge which included the parties' respective case submissions, and photographs of the subject property. In advance of the hearing, the skeleton argument on behalf of the Respondent was submitted alongside a joint authorities bundle.

9. The hearing was held remotely on Microsoft Teams. To assist the Appellant, who was not professionally represented, and with the agreement of both parties, the Tribunal varied its model procedure to allow the lay Appellant to present his case second, with Ms Inglis retaining a right of reply.

Preliminary issue

10. Ahead of the hearing, the Appellant submitted an application to introduce late evidence, which comprised an evidence bundle and 29 attachments, containing supporting evidence.

Mr Elliott stated that the representative who originally lodged the appeal was no longer acting for him, and as he did not have access to the original documentation, he provided a new set of documents. A copy of the original documents was sent to the Appellant on 12 January 2026.

11. In accordance with regulation 17A of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269), late evidence may be admitted with the agreement of all parties to the appeal. As the Respondent objected to the inclusion of certain documents, Senior Member Mrs Carman considered the Appellant's application in full, including the reasons provided for submitting new evidence, and concluded that the documents to which the Respondent objected would be excluded. The Appellant was notified of this decision on 14 January 2026. At the hearing, the Appellant again referred to the inclusion of this evidence, however this matter had already been addressed and decided by a Senior Member.

Relevant Law

12. Section 64(1) of the Local Government Finance Act 1988 defines a hereditament by referring back to the meaning that section 115(1) of the General Rate Act 1967 would have had if that Act were still in force, with the courts providing further clarification in line with established principles of rating law.

    "hereditament" means property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in the valuation list.

Discussion

13. The issue to be determined was whether the appeal property's current assessment should be split into six hereditaments on the material day of 1 December 2021.

14. Before the Appellant acquired the property, it had been occupied by the previous owner as a single hereditament. Following the purchase, the Appellant continued to use Unit 1 for metal fabrication activities, while the remaining five units were let to licensees under short-term lease agreements running from 1 December 2021 to 1 December 2026, all of whom used the units for industrial purposes. The Appellant argued that the assessment should be split from this point.

15. Following the Appellant's proposal, the Valuation Officer initially indicated that they were prepared to implement the requested alterations. However, before issuing the decision notice, they reconsidered their position after identifying a clause within the licence agreements, which, in their view, meant that the units remained under the paramount control of the Landlord and therefore could not be treated as separate units of assessment.

16. The relevant clause in the lease agreement that was in effect on 1 December 2021, was clause 2.2 (b). The Respondent contended that the Appellant remained in general control of the whole appeal property, which included Units 2-6.

    2.1 Subject to clause 3 and clause 4, the Licensor permits the Licensee to occupy the Property for the Permitted Use for the Licence Period (so far as is not inconsistent with the rights given to the Licensee to use the Property for the Permitted use) together with the rights mentioned in Schedule 1.

2.2 The Licensee acknowledges that:

(a) the Licensee shall occupy the Property as a licensee and that no relationship of landlord and tenant is created between the Licensor and the Licensee by this licence;

(b) the Licensor retains control, possession and management of the Property and the Licensee has no right to exclude the Licensor from the Property; *and* (emphasis added).

(C) the Licensor has the right to enter the property on reasonable notice during normal working hours or in the event of an emergency at any time without notice, with any necessary contractors to view the state of the property or to carry out any necessary repairs

(c) the license to occupy granted by this agreement is personal to the Licensee and is not assignable and the rights given in clause 2 may only be exercised by the Licensee and its employees.

17. Within the licence agreement *'The Licensor'* is Jailmake Limited (the Appellant). The *'Licensee'* is self-explanatory. '*The Building'* means the whole of the freehold property at Braeside Works. *'Property'* refers to each of the units shown in red on the plan with the licence agreement. *'Common Parts'* refers to such roads, paths, entrance halls, corridors, staircases, landing and other means of access in or upon the building the use of which is necessary for obtaining access to and egress from the Property and toilets, kitchen and common facilities as shown shaded blue on the plan with the licence agreement. At the hearing, the Appellant stated that the common parts within Unit 1 referred only to the toilets. Units 1 and 6 have their own toilets. There were no toilets in the remaining units.

18. The Respondent submitted that clause 2.2 (b) of the licence agreement should take priority over clause 2.2(C) for the following reasons:

    a. Clause 2.2 (C) is framed in positive terms. The Licensee acknowledges a right held by the Licensor. It does not impose any restriction on the Licensor's rights, nor does it indicate that the Licensor has relinquished any rights. Notably, limiting language such as '*the Licensor only has the right to enter the Property*…' is absent. In addition, the clause does not define what constitutes *'reasonable notice'* or *'normal working hours'*.

    b. Clause 2.2(C) may therefore be interpreted as identifying certain examples of situations in which the Licensor might choose to exercise the unrestricted right of entry granted under clause 2.2(b).

    c. If the Licensor were to access one of the licenced units without notice (other than in an emergency), it is difficult to see how a Licensee could successfully pursue a claim for trespass relying on 2.2(C), given the clear and unqualified wording of clause 2.2(b).

    The Respondent also argued that the unfettered right of access granted to the Licensor under clause 2.2(b), constitutes a significant interference with the Licensee's enjoyment of Units 2-6 for the purposes of their businesses.

19. The Appellant's arguments focused primarily on the perceived unfairness of the decision and the limited time he had been given to respond, which he regarded as procedurally unfair. He argued that he had used an old licence agreement as a template for the new tenants at Braeside Works and had made amendments to it. This included the addition of clause 2.2c, which he claims set out the Licensor's limited rights of access to the individual rented units. He therefore maintained that it was clear that there was a drafting error in not changing the word "property" to "building" in the lease agreements, and it failed to reflect the parties' intention. He maintained that what was more important was the facts on the ground, which demonstrated that the individual licensees were in paramount occupation of their own units.

20. In his evidence, the Appellant included a sample of a revised lease agreement containing an amended clause, initialled by the licensee. However, the amendment was undated, and although the Appellant asserted that the lease had been backdated to the original start date of 1 December 2021, the panel noted that the change had been made in direct response to the decision notice and was not in effect on the material day.

21. The Appellant also referred to lease agreements for another company, Second Floor Studios Association, to support his argument. He contended that this company rents out units in a comparable complex, and although its licence agreements include the same clause, the Valuation Officer had nonetheless assessed those units individually. The panel took this evidence into account but remained mindful that it was required to consider the specific circumstances of the case before it.

22. Reference was made by the Appellant to the VOA Rating Manual as he considered that the Valuation Officer was acting against its own advice and guidance.

    a. Section 6: Check, Challenge Appeal & Proposals: Part 1c (ii): 5.0 Inaccuracies, Ambiguities, Errors and Omissions: *"if in the exercise of his discretion he chooses to disregard it and proceeds on the basis that the proposal is valid, it is entirely proper and the VO may either adjust the rateable value or allow the case to proceed to appeal."* refers to whether a proposal is valid. However, the panel was aware that invalidity rules ended on the introduction of the 2017 list and therefore this was taken out of context. The discretion concerned whether to overlook a minor mistake when someone was completing a proposal form.

    b. Section 5A: Offices: Appendix: 3.1 Unit of Assessment: *"Ordinarily, greater weight should be afforded to the facts 'on the ground'[…] A consistent theme that runs through case law is the importance of gaining an appreciation of the overall picture and not focussing on any one aspect or element at the expense of another."*

    c. Section 5a: valuation of all property classes: 3.2 Rateable Occupation: *"The individual units will be hereditaments, providing the facts of occupation show that the occupiers of the individual units are in rateable occupation. …Re the Appeal of Heilbuth (VO) [1999] LT RA 109. In Heilbuth, the VT had decided that 55 starter workshop units in Enfield, converted from a 1930s factory, should be assessed as a single hereditament. The VO made an appeal to the Lands Tribunal.*

    d. Section 5a: Offices: Appendix for Serviced Offices: 3.3 Exclusivity: *"The Lands Tribunal in Heilbuth approached the issue of exclusive occupation in terms of who is in paramount occupation or control; is it the landlord or the licensee? The Lands Tribunal considered the licence agreements between the parties, and whether a licensee could reasonably expect to be able to carry out its business during normal* *business hours without interference or interruption by the landlord. It also considered the 'facts on the ground'. Despite retaining keys and control to the main gate, the Landlord was held not to be in control of the licensee's occupations; the landlord also had keys to the individual units so he could easily check on matters such as electrical safety etc. However, the Lands Tribunal held paramount control remained with the licensees, because having keys did not give the right to the landlord to conduct business in the units. It was the licensee who had the paramount use and control of its unit for its particular purpose."*

"The Lands Tribunal did not find the exclusivity of the licensees affected by the landlord retaining control over the main gate or having a duplicate set of keys to the units in order to enter for a variety of purposes. This did not give the landlord a right to occupy or conduct business in the units or give it paramount control.

[…] *"it was the standard licence terms and the overall picture in terms of occupation 'on the ground' that led the Lands Tribunal to conclude that the occupations in Heilbuth were sufficiently permanent".*

e. Section 6: Check, Challenge Appeal & Proposals: Part 1c (iii), 6.0. The Appellant argued that the wording of the license agreements should not be viewed on their own but with regard to the "facts on the ground". He maintained that clause 2.2b and 2.2c could be read as being in conflict with one another and the Valuation Officer should have taken action to raise this issue earlier to allow clarification regarding the facts on the ground. "*The difficulty with premises like serviced offices is the actual wording of the licence agreements, length of stay of the users and how the enterprise is run ie the facts on the ground, that will determine who actually has paramount control".*

23. With respect to the rating manual, Ms Inglis stated that it serves only as guidance, and it conflicts with the *Ludgate House* decision. She stated that the guidance predates the *Ludgate House* judgment and, although some amendments were made in August 2025, it has not been updated to reflect subsequent case law. She further stated that the manual's guidance concerning *Re Heilbruth* [1999] RA 109 is inaccurate. When the case is considered in context, it does not support the proposition that the facts on the ground should outweigh the contract. In fact, the judge specifically addressed the issue of exclusion by terms of the contract, concluding that in that case the retention of the keys was inconsistent by reference to the contract.

24. The Respondent referred to *Woolway v Mazars LLP* [2015] AC 1862 which sets out the 'geographic' test. The primary test for identifying a hereditament "is geographical and depends simply on whether the premises said to constitute a hereditament constitute a single unit on a plan". The Valuation Officer accepted that the individual units are sufficiently identifiable to be capable of being separate hereditaments if the rateable occupier of each individual units was different to that of Unit 1 and the common parts, which were occupied by the Appellant. A red line can be drawn around each unit on a plan. Ms Inglis argued that the outcome turned solely on who is in rateable occupation.

25. The principles for establishing rateable occupation are contained in *John Laing & Sons Ltd v Kingswood Assessment Committee* [1949] 1 KB 344. This case set out four ingredients in constituting rateable occupation:

a) actual occupation;

b) beneficial occupation;
c) exclusive occupation;
d) occupation for not too transient a period.

26. The parties were in agreement that there was actual occupation, which was beneficial to the occupier, for a period which was not too transient. The issue in dispute was the ‘exclusive occupation’ element. Where two persons may occupy, the question is who is in paramount occupation. The Respondent therefore maintained that the Appellant was in paramount occupation of the whole site.

27. The Appellant contended that all four elements were satisfied, as the facts on the ground demonstrated that each licensee enjoyed actual exclusive use of their respective unit, while the landlord retained access rights only for emergencies, repairs, or to maintain the building’s condition. He argued that the licence had been verbally agreed, clearly explained and understood by the licensees to confer exclusive occupation, with the licensor exercising no control over the units. He stated that each unit contained permanent machinery specific to the occupant’s operational needs.

28. At the hearing, the Appellant stated that the Valuation Officer had inspected the property, but it had not been possible to allow access to every unit because he did not hold keys and had no ability to enter individual units. In particular, he stated that he had no access to Unit 3. The panel noted that neither party had submitted any evidence relating to this inspection before the hearing.

29. The Appellant further stated that the overall site was secured by a gate locked with a combination padlock, and all licensees had 24/7 access using the code. Access to the site was not controlled by the licensor, and he had no access to, or means of entering the individual units. Each licensee was responsible for cleaning and securing their own unit, and there was no interference with an occupant’s ability to use and enjoy their space for the purposes of their occupation.

30. In support of its case, the Respondent referred to *Holywell Union Assessment Committee v Halkyn District Mines Drainage Co* [1895] AC 117 to highlight that where one or more person is in actual occupation of a single hereditament, the rateable occupier will be the person whose occupation of the hereditament is ‘paramount’.

126. “There are many cases where two persons may, without impropriety, be said to occupy the same land, and the question has sometimes arisen which of them is rateable. Where a person already in possession has given to another possession of a part of his premises, if that possession be not exclusive he does not cease to be liable to the rate, nor does the other become so. A familiar illustration of this occurs in the case of a landlord and his lodger. Both are, in a sense, in occupation but the occupation of the landlord is paramount, that of the lodger subordinate.

133. “It is clear that exclusive occupation does not mean that nobody else has any rights in the premises. The familiar case of landlord and lodger is an illustration. The cases shew that if a person has only a subordinate occupation subject at all times to the control and regulation of another, then that person has not occupation in the strict sense for the purposes of rating, but the rateable occupation remains in the other, who has the right of regulation and control.”

31. In respect of paramount control, the Respondent also referred to *Westminster Council v Southern Railway Company* [1936] AC 511. Lord Russell confirmed that the guiding principle is who is in 'paramount occupation' and the 'landlord-control principle'. The Respondent argued that even though a landlord has assigned a particular room to a lodger, and the lodger would expect some privacy, the landlord retains general control over the entire lodging house and is in rateable occupation of the whole dwelling.

> *529. 'Where there is no rival claimant to the occupancy, no difficulty can arise; but in certain cases there may be a rival occupancy in some person who, to some extent, may have occupancy rights over the premises. The question in every case must be one of fact- namely, whose position in relation to occupation is paramount, and whose position in relation to occupation is subordinate; but, in my opinion, the question must be considered and answered in regard to the position and rights of the parties in respect of the premises in question, and in regard to the purpose of the occupation of those premises'.*

32. The Appellant submitted that each unit is physically and operationally independent. He maintained that the landlord's limited rights of entry do not amount to managerial or beneficial control, and that, as in the *Southern Railway* case, the assessment must focus on the factual reality of occupation. He argued that the decision reinforces the principle that paramount control is determined by the actual circumstances of occupation rather than by the wording of any contractual document:

> *532. 'In truth the effect of the alleged control upon the question of rateable occupation must depend upon the facts in every case'.*

> *561-562. 'It is obvious that what is considered here by the Court is merely the language of the agreement; yet it is clearly established, as I need not repeat, that what is material is not necessarily the terms of the grant, but the de facto occupation which may be greater or less than the terms convey'.*

33. The Respondent relied on the Court of Appeal decision in *Southwark LBC v Ludgate House Ltd* [2020] EWCA Civ 1637 [2021] WLR 1750, which addressed the question of who held paramount control of a property. In that case, an office building had been vacated pending demolition and property guardians occupied individual lockable rooms while sharing communal kitchens, toilets, and other facilities. Their licence agreements expressly stated that they had no right to exclusive possession of any part of the premises. The Court held that the guardians were not in paramount occupation of the individual rooms, instead, the building's owner remained in paramount occupation. Additionally, the Respondent argued that a guardian would not be entitled to bring an action of trespass. The Respondent argued that rateable occupation must therefore be determined by reference to the terms of the contract, and that, as in *Ludgate House*, the Appellant was in general control of Braeside Works.

> *40. 'If there is more than one candidate, who is in rateable occupation depends on "the position and rights of the parties in respect of the premises in question". If those rights depend on a contract, that necessarily means that the relevant tribunal must examine the terms of the contract, just as Tucker LJ did in Laing'.*

> *43. 'Having regard to his earlier observations, I find it difficult to suppose that Lord Russell was saying that contractual rights and obligations were irrelevant if they had not been exercised. On the contrary in my opinion, he considered that the relevant*

question was whether, if exercised, those rights would interfere with the occupant's enjoyment of the premises'.

34. The Respondent also referred to *Kevin Prosser KC v Ricketts (VO)* [2024] UKUT 264 (LC), [2024] 4 WLR 95, which considered rateable occupation within a barristers' chambers. Although the chambers possessed a legal power to require individual barristers to move rooms, this power had not been exercised, and many barristers had remained in the same rooms for extended periods. This argument was rejected by the Upper Tribunal affirming that the contractual rights need not have been exercised in order to be determinative.

35. The Appellant referred to *Westminster City Council v Tomlin* [1989] 1 W.L.R 1287 (CA) which is a case in which squatters were found to be in rateable occupation of the former Cambodian Embassy in London. He argued that what is actually happening on the ground outweighs the effect of the applicable contractual terms. However, the Respondent directed the panel to the relevant paragraph of this decision and highlighted that in this appeal there was no evidence of a tenancy agreement being in place.

36. The parties made brief reference to *Cardtronics UK Ltd and Ors v Sykes and Ors (VO)* [2020] UKSC 21, another case involving shared actual occupation, this time concerning ATM machines located in supermarkets. The Appellant contended that the present case is not comparable, as the parties here do not share the economic benefits derived from the other units. Their primary business is a metal fabrication company, not property management, and that the units were sublet solely to avoid leaving them vacant and falling into disrepair, given that the entire site was not required for their operational needs.

37. Having considered all the evidence and submissions, the panel concluded that the determinative issue in this appeal was the legal effect of the licence terms that applied on the material day, 1 December 2021. Although extensive argument was presented concerning the parties' intentions, the practical use of the units, and events occurring after that date, the panel was required to determine the matter by applying established rating principles to the circumstances as they existed at the relevant time. The documentary terms governing occupation on the material day were therefore of central importance. The panel accepted that the Appellant had subsequently sought to amend or clarify the agreements in order to correct what he perceived to be drafting inaccuracies. However, those later amendments could not alter the legal rights and obligations in force on 1 December 2021. When considered objectively, clause 2.2(b) of the licence conferred upon the Appellant an unrestricted right of possession, control and access to each of the units, and the panel found that this contractual right was fundamentally inconsistent with the grant of exclusive possession to the licensees. This right was sufficiently wide in scope to constitute paramount control for rating purposes. The panel therefore determined that the Appellant remained in paramount occupation of the whole property on the material day.

38. The panel was also mindful that the burden of proof lay with the Appellant. To succeed, he was required to demonstrate, on the balance of probabilities, that each of the six units constituted a separate hereditament within the meaning of section 64 of the Local Government Finance Act 1988. While the panel accepted that the individual occupiers operated their businesses independently and made exclusive day-to-day use of their respective spaces, this did not, in itself, establish exclusive occupation in the rating sense. Where a landlord retains a contractual right amounting to general control and overriding possession, the occupier's use is legally subordinate. In this case, the panel found that the Appellant had not provided evidence capable of displacing the clear effect of clause 2.2(b), nor had he demonstrated that the factual occupation had overridden the contractual structure

in a manner analogous to cases relied upon, such as Tomlin or Heilbuth. The panel therefore concluded that the Appellant had not discharged the burden of demonstrating that six distinct hereditaments existed.

39. Accordingly, the panel held that, notwithstanding the Appellant's assertion that clause 2.2(b) did not reflect the parties' intended arrangement, the clause was legally operative and unequivocal in its effect. On the material day the Appellant, as Licensor, retained paramount control over all six units, including the ability to enter or regulate the use of the premises without limitation. This level of control was inconsistent with the existence of separate rateable occupations by the individual licensees and precluded the identification of discrete hereditaments for rating purposes. The property therefore fell to be assessed as a single hereditament, and the existing entry in the rating list remained correct.

Conclusion

40. In view of the above findings and conclusions, the panel determined that as at 13 November 2020 the appeal property was correctly assessed as one hereditament and the appeal was dismissed.

Right of further appeal

41. 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.

42. 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/.

Mrs N Carman, Senior Member (Chair)
Ms L A Owusu-Afriyie, Senior Member
19 February 2026

Mrs K Edhouse-Thomas
Clerk to the Tribunal
Date issued to the parties: 19 February 2026