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

Case No: CHG101256702

Sitting remotely using Microsoft Teams on 8 June 2026

Date: 7 July 2026

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

2023 Rating List Appeal: challenge against compiled list entry; retail warehouse and premises; accuracy of rateable value; Lotus & Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; *Lamb v Minards (VO) [1974] RA153; Lamb (VO) v Go Outdoors [2015] RA 475; appeal allowed.*

Before:
MR WJ READ
MR APS CRAWFORD

Between:

TFS STORES LIMITED — **Appellant**

- and -

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

Regarding:

UNIT 2A, FORT SHOPPING PARK, BIRMINGHAM B24 9FP
(the "subject property")

Ms C Taylor from Ryan Property Tax Services UK Limited (on behalf of the appellant as advocate and expert witness)
Mr A Khan (on behalf of the respondent as advocate and expert witness)

DECISION AND STATEMENT OF REASONS

DECISION

1. The appeal is allowed.

2. The Tribunal confirms the rateable value (RV) of £18,250 with effect from 1 April 2023

STATEMENT OF REASONS

Introduction

3. This appeal had been brought in respect of retail warehouse and premises at Unit 2A Forst Shopping Park, Birmingham B24 9FP (the subject property), which was entered in the 2023 Rating List as 'retail warehouse and premises' at an RV of £36,250 effective from 1 April 2023.

4. The appellant's Challenge was submitted by the appellant's representative on 7 August 2024 and sought a reduction in the RV to £16,000 with effect from 1 April 2023. The appeal to this Tribunal was made on 30 January 2026, following the Valuation Officer's (VO) Decision Notice of 4 December 2025 in respect of the subject property.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable.

6. The subject property is a retail warehouse in Fort Shopping Centre in Birmingham. It has a portal frame construction with a mix of metal cladding and blockwork on the façade. It also has large, glazed windows and a flat pitched roof. It was constructed in 1997 and has an ITMS of 90m^2. Fort Shopping Centre lies of the A47 a key route to Birmingham city centre and has excellent road links.

7. Ms Taylor appeared on behalf of the appellant as both 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 her 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). Ms Taylor confirmed that she was instructed under a contingency fee and she declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and that she would comply with this as well as the requirements of her professional body, regardless of whether or not the evidence supported her client's case.

8. The panel accepted this 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 Procedure regulations 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.

9. The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

10. Ms Taylor submitted that she had revised her proposed tone and she would therefore be arguing for a tone of £200/m^2 leading to an RV of £18,250 instead of the original proposed RV of £16,000.

11. Mr Khan explained that having reviewed the rateable plant and machinery in the subject property he had increased its value by £66 but this did not affect the RV of £36,250 which he submitted was fair and reasonable.

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

Issue

13. The issue for the panel to make a finding on was the tone for the subject property which was presently £400/m^2 with an RV of £36,250. The appellant submitted that the rate was too high and that a tone of £200/m^2 was reasonable giving an RV of £18,250.

Relevant Law

14. In arriving at a decision, the panel is governed by rating legislation laid down by Parliament where Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

> 2(1) 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.
> (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.

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 2014 (SI 2014 No. 2841).

16. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material date is 1 April 2023 being the commencement date the 2023 rating list.

Discussion

17. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2021.

18. The panel turned to the six propositions set down in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 which was binding on this panel. The first two propositions are:

    (1) Where the hereditament which is the subject of consideration is actually let, that rent should be taken as the starting basis.

    (2) The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in section 19(6) of the General Rate Act 1967 the more weight should be attached to it. (These statutory requirements now contained in Schedule 6, Para 2 (1) Local Government Finance Act 1988 (as amended by the Rating (Valuation) Act 1999)).

19. The panel noted that the subject property was held under a lease commencing on 24 March 2020 at a rent of a peppercorn, if demanded. In addition, a turnover rent of £24,000 was payable in the first year. The panel considered that the provision for a peppercorn rent indicated that, in the opinion of the parties to the lease, the property was not capable of attracting a conventional open market rent at that time. This reflected the significant impact of the Covid-19 pandemic on the retail sector. The appellant operated a business which, under the lockdown restrictions then in force, was required to remain closed for extended periods. In these circumstances, the panel attached little weight to this rental evidence.

20. The panel therefore looked to the comparable properties provided by both parties. The third and fourth propositions set out in *Lotus and Delta* were considered by the panel in regard to the comparable properties put into evidence by both parties:

    (3) Where rents of similar properties are available, they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.

    (4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the valuation officer. In subsequent proceedings on that list therefore they can be properly be referred to as giving an indication of that opinion.

21. The panel then considered the rental evidence submitted by the appellant relating to 16 comparable properties located within the West Midlands and therefore in the vicinity of the subject property. The panel noted that these properties ranged in size from 126.30m² to 5,406m², which meant that some were up to 5,316m² larger than the subject property. The UARs ranged from £38/m² to £200/m². The panel noted that all were significantly lower than the UAR of £400/m² for the subject property. The panel noted that the comparable property evidence was derived from actual lease transactions and therefore attached weight to it.

22. The panel noted that the closest comparable in terms of size was Unit 5, Kynner Way, which had an area of 126.30 m² and a UAR of £150/m², compared with the subject property's ITMS of $90m^2$ and UAR of £400/m². Whilst the panel took account of the VO's observations regarding the distance of the comparables from the subject property, it considered that they nevertheless provided useful evidence. In particular, the panel was aware that there were

limited new lettings around the AVD and therefore accepted that a wider geographical spread of comparables was appropriate. Accordingly, the panel attached weight to this evidence.

23. The panel then turned to the tonal evidence put forward by the VO. They were comparable properties in the Fort Shopping centre. The panel noted that the VO submitted that the tone in the Fort Shopping Centre was for units under 100m^2 to have a tone of £400/m^2 and those between 100m^2 and 1,999m^2 to have a tone of £200/m^2:

(1) Costa Coffee was a café and premises with an ITMS of 95m^2 and had a UAR of £400/m^2.
(2) Unit 2B was a shop and premises with an ITMS of 97.80m^2 and a UAR of £400/m^2
(3) Unit 9A at 2 was a shop and premises with an ITMS of 85.79m^2 and a UAR of £400/m^2.

24. The panel then turned to the units put into evidence by the VO that were rented by Greggs. They were firstly Unit 9B4 at 20 Fort which Greggs had leased on 26 February 2021 for a rent of £56,160 which analysed to £418.74/m^2. Greggs then leased unit 9B3 as well which became Unit 9B-3 & Unit 9B4 at 20 Fort Parkway. This hereditament had an ITMS of 171m^2 from 8 April 2022. This new lease was for a ten year term with five yearly rent reviews, on FRI terms. The rent analysed to £486.51/m^2 which supported the adopted tone of £400/m^2 on the subject property. It had an ITMS of over 100m^2 and a UAR of £200/m^2 which fitted into the tone adopted by the VO. The panel however noted that when Greggs took the new lease on a surrender and renewal effective from 8 April 2022 this meant that the first lease, was only in force for one year and 41 days. The first year of this lease was therefore rent free and 41 days of the second year was paid at only 50% of the full rent being a rent of £28,080. The panel placed little weight on this rental evidence.

25. The panel noted that the three other units under 100m^2 had a UAR of £400/m^2. It also noted however that despite being under 100m^2 Unit 9B-4 at 20 Fort Parkway had a UAR of £200/m^2 based on a lease dated 26 February 2021 which was close to the AVD. The panel found that the VO had not therefore demonstrated that a tone had been established of properties below 100m^2 having a UAR of £400/m^2.

26. The appellant argued that the tenants of two of the comparable properties were Greggs and Costa which were both takeaway shops. This meant that they were able to remain open even during some of the lockdowns as a result of the type of trade they carried out. The appellant however sold perfume and so had to remain closed during the periods of lockdown. The panel placed limited weight on this argument as the value used in assessing the RV must reflect the unit vacant and to let and was not based on the type or profitability of the business actually occupying a property. The panel was aware that two of the comparable properties were food takeaways also meant that they were not ‘like for like’ comparable properties with the subject property perfume shop. The panel therefore placed little weight on this evidence.

27. The panel now turned to the fifth and sixth propositions from *Lotus and Delta*, namely:

(5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attached to the differing types of evidence depending on the one hand the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

(6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in each circumstance, it would be difficult to reject the evidence of the actual rent.

28. The panel then considered the submission by the appellant that the percentage decrease on the subject property between the 2017 rating list and the 2023 rating list was too low and was not supported by the market. The appellant had provided fifteen comparable properties located in the Fort Shopping Park which had had a percentage decrease between the lists of between 54% to 63%. The subject property however had a decrease of only 8% between the lists falling from a UAR of £435/m^2 to £400/m^2.

29. The panel took into consideration the case law of *Lamb v Minards (VO) [1974] RA153* and *Lamb (VO) v Go Outdoors [2015] RA 475*. The panel preferred to place weight on comparable properties rather than the comparison between two lists. The different lists were based on rental evidence from two different AVD's. The panel found that the percentage fall between the two lists of these comparable properties did suggest that the decrease of 8% on the subject property was lower than was demonstrated by the market fall on the comparable properties.

30. The panel found the totality of evidence submitted by the appellant was more persuasive. The panel put weight on the comparable properties within the West Midlands which were all from derived from leases close to the AVD. The panel found that of the four comparable properties put into evidence by the VO two were of a different type of premises to that of the subject property. The panel also found that the VO had not demonstrated that a tone of £400/m^2 for a property under 100m^2 had been applied to all the properties in the Fort Shopping Centre. The percentage fall in RV's between the two rating lists was not strong evidence but did demonstrate a much more significant fall between the two lists than had been reflected in connection with the subject property. In line with the fifth and sixth propositions in *Lotus and Delta* the panel found the basket of evidence supported a UAR of £200/m^2 for the subject property.

31. In appeals of this nature the burden of proof was on the appellant to provide evidence to demonstrate that the RV of the subject property was unreasonable. The panel found that the appellant in this case had discharged that burden. The panel was therefore satisfied that the basket of evidence supported that the current assessment for the subject property was unreasonable.

Conclusion

32. Having considered both parties' submissions and evidence, the panel concluded that a UAR of £200/m^2 was fair and reasonable resulting in an RV of £18,250. In view of the above findings and conclusions, the Tribunal Panel allowed the appeal.

Order

33. As a consequence of the above decision, the VO is ordered to amend the 2023 Rating List entry to an RV of £18,250 with effect from 1 April 2023 within two weeks of the date of this Order.

Refund of fees

34. 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

35. 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.

36. 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 WJ Read, Senior Member (Chair)
Mr APS Crawford, Senior Member
7 July 2026

Miss F Willson
Clerk to the Tribunal
Date issued to the parties: 7 July 2026