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

Case No: CHG101268559

Sitting remotely using Microsoft Teams

Date: 4 July 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

2023 Rating List Appeal: Local Government Finance Act 1988; Shop and premises; Correct main space rate to be applied; Appeal dismissed.

Before:
MR A HUSSAIN
MR G MCGILL

Between:

LUSH RETAIL LIMITED **Appellant**

- and -

KAREN GILES
(VALUATION OFFICER) **Respondent**

Regarding:
142 MERCHANTS HALL, CHAPELFIELD, NORWICH, NR2 1SH
(the "subject property")

Mr S Penny, from Ryan Property Tax Services Ltd representing the Appellant
Mr T Manyadza representing the Valuation Officer

Hearing date: 6 June 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal Panel determined the appeal property's existing assessment of £106,000 Rateable Value (RV), with effect from 1 April 2023 was not unreasonable

Introduction

3. This appeal had been brought in respect of the following: 142 Merchants Hall, Chapelfield, Norwich, NR2 1SH, which was entered in the 2023 Rating List as Shop and Premises at £106,000 Rateable Value (RV), with effect from 1 April 2023.

4. The appellant’s challenge to the Valuation Officer (VO) was made on 13 September 2024. The appeal to this Tribunal was made on 27 January 2025, following the VO’s decision notice of 31 December 2024, that the subject property’s Rateable Value would remain unaltered. The material day in this appeal is 1 April 2023.

5. The subject property is a retail shop and premises situated on the lower ground floor within Chantry Place Shopping Centre, also referred to as Chapelfield Shopping Centre in Norwich city centre. The shopping centre was built in 2005/2006 in the centre of Norwich with close proximity to Norwich bus station, a short walk to the marketplace and served by the ring road around Norwich and with road links to the A47. The subject property assessment comprises a total floor area of 236.27m^2 of zoned sales area and storage

6. Mr Penny 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 Penny’s 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 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.

7. 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.

8. The hearing was held remotely on Microsoft Teams.

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

Background

10. The appellant sought a reduction in the RV of the subject property to £73,500, on the basis that the unadjusted rate (UAR) of £1200/m^2 was excessive and that it should be reduced to £830.00/m^2.

Relevant Law

11. 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.

12. 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

13. In arriving at its decision, the panel turned to the issue of whether the current UAR applied to the appeal property's assessment was unreasonable. Mr Manyadza supported the existing UAR of £1200/m^2. Mr Penny sought a reduced UAR of £830/m^2 stating that the existing rateable value did not fully or accurately take into account the evidence of comparable property assessments with the respondent not having taken a stand back and look approach when determining the rateable value.

14. 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.

15. In considering whether the current RV was reasonable, the panel turned to the rent passing on the subject property. The panel noted that the current rent for the subject property was stated by the appellant to be held on a new lease effective from 24 December 2018 for a term of 10 years at a passing rent of £130,000 per annum with an initial rent-free period of 6 months agreed. Factoring in adjustments and the rent-free period according to the appellant produced an effective rent of £109,179 per annum which analysed to a revised figure of £1,169.30/m^2, compared to the current adopted tone of £1,200/m^2 .

16. The appellant acknowledged that the rent for the subject property was too distant from the AVD for the 2023 list to offer any definitive guidance on the correct rateable value.

17. Notwithstanding, the appellant remarked that the rent being in late 2018 would be, by present standards, at the height of rental values in Chapelfield Shopping Centre, as it was agreed prior to the Covid-19 pandemic, with the uncertainty that the pandemic brought to the rental market in Norwich around the 1 April 2021.

18. In support of the appeal, the attention of the panel was brought to a ‘rent waiver side letter’ for the subject property, dated 1 September 2021, which referred to a specific period reflecting 219 days rent free in the year prior to the AVD. Mr Penny stated with the rent further analysed to arrive at an AVD value reflective of this waiver, this resulted in an effective rent of £77,541 per annum which analysed to £830.45/m^2. It was stated that this approach, due to the amendment to the lease has been accepted at challenge stage within other challenge settlements in the East of England and across the country, with similar side letters used in shopping centres across the country to correctly account for the impacts on the retail sector post Covid. Evidence of this was produced in respect of four properties in Newcastle’s INTU Shopping Centre, in Eldon Garden, Eldon Square, or Eldon Way, Newcastle, where it was stated that the Valuation Office Agency (VOA) had valued the units using headline rents which had been reduced following more evidence becoming known as a result of the side letters.

19. The Respondent contended that the rent of the subject property could not be relied upon, for a number of reasons. Firstly, having checked its records, the Forms of Return stated that the lease on the subject property commenced on 24 June 2018 and that the agreed rent was £162,000 per annum for a lease term of 10 years, and not £130,000 per annum. Having re-analysed the subject rent using the correct rent details, as stated on the Form of Return by the appellant as £162,000, whilst also accounting for the rent concession the Respondent stated was 50% for a period of 219 days, Mr Manyadza stated he calculated an analysed rent of £1,483.58/m^2. Based on this revised analysis, the Respondent remained of the opinion that the subject rent actually supported the existing UAR of £1,200/m^2.

20. In addition, Mr Manyadza stated that the rent for the subject property was too remote from the AVD to be helpful and furthermore, as it was highly incentivised, he stated this further contributed to the reason why less reliance and weight should be attached to it.

21. Both parties, in support of their cases, referred to the rent of comparable properties, situated at Merchants Hall, Chapelfield, Norwich. The panel considered the rents of the comparable properties referred to by the appellant, at 141 and 211 Merchants Hall, which had rents that analysed at £912.36/m^2 and £1,048.48/m^2, respectively. The former of these was located next to the subject property, with the other located on a different floor within the shopping centre.

22. With regard to 141 Merchants Hall, the appellant’s submission stated this property to be held on a lease effective from 1 January 2021, three months prior to the AVD, on a five year term with a passing rent of £80,000 per annum. Based on the information available the appellant stated this to be the strongest and most reliable piece of comparable property evidence, fully supporting the waiver to the rent on the subject property.

23. The Respondent questioned that the rent for 141 Merchants Hall was agreed at £80,000 per annum with the lease effective from 1 January 2021. Mr Manyadza stated the Respondent’s records showed the declared information about this lease, again via the Form of Return

records, showed that the lease on this property commenced on 25 March 2019 approximately twenty four months after the AVD.

24. The analysed rent of £1,048.48/m^2 for 211 Merchants Hall was based on a lease effective from 12 July 2022, fifteen months after the AVD, for a term of 10 years with a 5-year rent review pattern, at a passing rent of £100,000 per annum, and a 12-month rent free period. The appellant's representative stated this was an indication of the uncertainty in the market at and close to the AVD. Mr Penny added an element of growth coming out of periods of lock down would be expected and therefore a lower price per square metre should be assumed. The Respondent stated its records did not contain any information to verify this information. In the absence of any evidence to the contrary about this rental information, the panel noted that the Respondent's submission stated the lease started approximately thirty one months after the AVD, albeit without any evidence to corroborate this significant time gap, regarding this evidence as remote and unreliable.

25. The Respondent referred to six properties at Merchants Hall, directly comparable to the subject property, as reliable rental evidence of open market rental value, the rents of which analysed at values higher than the UAR of the subject property, between £1253.34/m^2 to £1,769.07/m^2. The rents stated by the Respondent to be the best evidence where those at numbers 143 and 115, with their rents analysing at £1,692.05/m^2 and £1,253.34/m^2, respectively. The former of these was situated adjacent to the subject property, with a lease at a passing rent of £140,000 from March 2021, one month before the AVD, whilst the other was leased at an annual rent of £102,700 in a five year new lease agreed in September 2020, some six months prior to the AVD, which analysed at £1,253.34/m^2.

26. Mr Manyadza stated that a stand back and look approach was adopted, as when considering 143, 115, and 141 Merchants Hall, all shops and premises of a similar size, two had UAR's of £1,200 and the other £1,150. Based on the available rental evidence of these comparable properties, he stated that the £106,000 rateable value for the subject property was reasonable and not shown to be excessive.

27. The panel gave regard to and deliberated about the submissions and evidence presented by both parties, In arriving at a decision, the panel noted that the appellant stated that the most pertinent rental evidence remained the rent of the subject property, taking into account the side letter detailing the rent waiver period, together with the VOA's approach in valuing units in other shopping centres using headline rents following evidence coming to light from similar side letters. The panel however placed little weight on the passing rent on the subject property. The rent was not only remote from the AVD; it was also incentivised. Whilst the approach taken by the VOA for properties in other locations, such as Newcastle, may have factored in the 'side letters' allowing for reduced rent periods, this was not necessarily evidence about the rental market in Norwich at the AVD. The panel was disappointed that there was no evidence to validate the passing annual rent amount submitted by the appellant and with this added uncertainty, this information and evidence was neither reliable nor helpful.

28. Instead, with the parties having presented rental evidence of comparable properties, the panel determined this to be more appropriate and useful to determine the valuation of the subject property, Taking into account the sizes, rents, rental agreements and other information and evidence about these properties, the panel was more persuaded by the properties submitted by the Respondent.

29. The panel deemed that the onus was on the appellant to evidentially demonstrate that the Rateable Value for the subject property was excessive, such that it necessitated a reduction. The evidence presented did not show this and the panel did not deem that there should be any alteration made to the existing entry in the Rating List .

Determination

30. In view of the above findings and conclusions, the panel was satisfied that the subject property's current assessment in the 2023 Rating List from 1 April 2023 at a Rateable Value of £106,000 was not unreasonable. Accordingly, the appeal was dismissed.

Right of further appeal

31. 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.

32. 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 Hussain, Senior Member (Presiding)

Mr G McGill, Senior Member

4 July 2025

Mr R Patel
Clerk to the Tribunal
Date issued to the parties: 4 July 2025