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

Case No: CHG101321340

Sitting remotely using Microsoft Teams on 20 April 2026

Date: 19 May 2026

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

2023 Rating List Appeal: Local Government Finance Act 1988; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976; mode or category; reality principle; Williams (VO) v Scottish & Newcastle Retail Ltd; Allied Domecq Retailing Ltd [2001] EWCA Civ 185; appeal dismissed

Before:

MS C JUKES
MR J TRAMBOO

Between:

MOVE PHYSIO — **Appellant**

- and -

ANDREW MOULAND (VALUATION OFFICER) — **Respondent**

Regarding:

33 -35, YORK STREET, TWICKENHAM TW1 3JZ
(the “subject property”)

Appearances:
I Gathercole of Ryan LLC, for the appellant
T Abbott, for the Respondent

DECISION AND STATEMENT OF REASONS

DECISION

1. The appeal is dismissed. The panel found that the subject property was appropriately valued in the 2023 Rating List.

Introduction

2. This appeal has been brought in respect of the 2023 rating list entry for 33-35 York Street, Twickenham TW1 3JZ. It was shown in the rating list at a rateable value (RV) of £31,500 with effect from 1 April 2023. This was based on a rate of £200/m^2.

3. A challenge was submitted on 15 May 2024 which disputed the determination of the RV. The tone of £200/m^2 was challenged and the appellant proposed a reduction to £185/m^2 which results in a RV of £29,250.

4. During the challenge process, the respondent reclassified the property from a shop to 'gymnasia/fitness suites'. This decision followed an inspection of the subject property, which identified significant works undertaken in 2019 converting it into a physiotherapy clinic, including individual treatment rooms and rooms fitted out as gyms. As a result, the valuation was revised and increased to a tone of £230/m^2, producing a revised RV of £35,250.

5. The appellant disputes the reclassification and the valuation tone adopted and therefore appealed to this Tribunal.

6. In advance of the hearing, the appellant's representative provided an email and attachment which was omitted from the challenge decision but had formed part of the basket of evidence discussed during the challenge process. The respondent's representative raised no objection to the inclusion of this material, and it was therefore admitted for the panel's consideration.

7. Mr Abbott, for the respondent, and Ms Gathercole, for the appellant, both appeared in dual roles of advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson* (VO) [2018] UKUT 0253 (LC), Ms Gathercole confirmed that she was instructed under a conditional fee arrangement but declared that she understood her overriding duty to the Tribunal.

8. The panel accepted the expert witness evidence on this basis as the appeal was not considered to be 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 Tribunals' rules concerning 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.

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

Issue & Relevant Law

10. The issue between the parties concerned the RV of the subject property, specifically whether the mode or category should have been changed and the appropriate valuation tone. The tone following challenge was £230/m^2. The appellant is seeks a reduction to £185/m^2.

11. The term ‘rateable value’ as defined in paragraph 2(1), 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;
>
> 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.”

12. The antecedent valuation date (AVD) for 2023 list rating appeals is 1 April 2021. The material day in this appeal is 1 April 2023.

13. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta v Culverwell and Leicester City Council (*LVC/376/1975). This case had established six propositions, which gave clear guidance to be followed when assessing rateable value.

Discussion

14. During the challenge process, the respondent reclassified the property from a shop to a gym. The appellant argues that, as the fit-out costs largely relate to non-rateable items, the property should continue to be valued as a shop. It was submitted that only £2,808 was spent on partitioning walls, with the remainder being non rateable equipment, such as examination tables. On this basis, the appellant analyses the subject rent to £188.81/m², which is said to support the proposed tone of £185/m².

15. The respondent, by contrast, considers that the property underwent significant fit-out works in 2019, converting it into a physiotherapist clinic. On this basis, the respondent applies a base value of £230/m² and analyses the rent to £236.23/m².

16. The panel considered the competing submissions regarding the appropriate mode or category of the hereditament as at the material day. The respondent contends that the works undertaken prior to the material day materially altered the essential character of the premises such that it should be categorised as a gym. The appellant disputes this, arguing that the premises remained a shop with removable items. Reliance was placed on *Fir Mill Ltd v Royton Urban District Council* (1960) 7 RRC 171 and the reality principle as endorsed in *Williams (VO) v Scottish & Newcastle Retail Ltd; Allied Domecq Retailing Ltd* [2001] EWCA Civ 185, with the submission that non-structural works should be ignored.

17. The panel noted that the schedule of works confirmed that the fit-out went beyond minor or cosmetic adaptation and included, among other matters, the installation of shower facilities, associated plumbing and services, stud partitioning, and internal alterations designed to facilitate gym use. In the panel's view, the provision of shower facilities is a strong indicator of leisure or gym use and is not ordinarily associated with retail occupation.

18. The appellant did not provide internal photographs or other contemporaneous evidence demonstrating that, notwithstanding the works undertaken, the premises retained the essential character of a shop at the material date. While reference was made to an earlier agreement when the property was assessed as a shop, no evidence of that decision was produced to enable the panel to assess its factual basis.

19. Applying the principles in *Williams (VO) v Scottish & Newcastle Retail Ltd* [2001] EWCA Civ 185, the panel accepts that mode or category depends on the real character and use of the hereditament at the material day. Under the rebus sic stantibus principle, a hereditament must be valued in its actual physical state and actual mode of occupation. It cannot be assumed that the property would be altered or put to a different use. Crucially, the Court of Appeal confirmed that mode or category depends on the real character and use of the premises, not on valuation methodology, rental levels, or the presence of removable or non-rateable fit-out.

20. On the evidence before it, the panel was satisfied that the works went beyond minor or ancillary adaptation and materially changed the character of the premises. The panel therefore finds that, as at the material day, the hereditament was properly categorised as a physiotherapy clinic and should be valued on that basis.

21. Turning to the valuation tone, both parties relied on the subject rent as the primary evidence, consistent with the principles in *Lotus & Delta*. However, the parties differed as to the appropriate analysis of that rent.

22. The subject property was agreed on a rent of £32,500 with effect from 1 January 2020

23. The total cost of the works was approximately £87,000, of which £21,991 related to rateable fit-out. The respondent submitted that, when analysing the rent, it was reasonable to disregard the four-month rent-free period attributable to fit-out and to amortise the £21,991 over five years, reflecting a reasonable period over which a hypothetical tenant would expect to recover the benefit of those works. The panel considers this approach to be reasonable and consistent with valuation practice in circumstances where the hereditament has been enhanced by works which form part of its physical reality at the material day.

24. The panel therefore accepts that the amortised fit-out cost was appropriately reflected in the analysis of the subject rent when determining the rental value of the hereditament as a physiotherapist clinic/gym.

25. The panel notes that the appellant provided no alternative rental evidence to support a lower valuation tone. Aside from the subject rent, there was no comparable evidence demonstrating that a lower £/m² level should be adopted for a physiotherapy clinic or gymnasium in this location.

26. In these circumstances, the burden of proof lies with the appellant to demonstrate that the assessment is excessive. Where both parties rely primarily on the subject rent, and the appellant seeks a lower tone, it is incumbent upon the appellant to provide evidence

substantiating that contention. The panel finds that the appellant has not discharged that burden. The appellant’s case on mode or category, which underpinned its lower valuation, has not been accepted and no further evidence was provided to support a reduced tone.

27. On the evidence before it and having regard to the subject rent analysed on a physio/gymnasium basis, the panel is not satisfied that a lower tone than that contended for by the respondent has been proven. On balance, the current rateable value is reasonable.

Conclusion

28. In view of the above findings the Tribunal is satisfied that rateable value is reasonable. The appeal is dismissed.

Right of further appeal

29. 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.

30. 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/.

Ms C Jukes, Senior Member (Chair)
Mr J Tramboo, Senior Member
19 May 2026

Mrs C McAvoy
Clerk to the Tribunal
Date issued to the parties: 19 May 2026