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

Case No: CHG101378903

Sitting remotely using
Microsoft Teams on
7 April 2026

Date: 5 May 2026

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

RATING — Local Government Finance Act 1988 — Porter (VO) v Trustees of Gladman SIPPS [2011] RA 33 —Aviva Investors Property Developments Ltd and PPG Southern Limited and Margaret Whitby (Valuation Officer) and Adrian Mills (Valuation Officer) [2013] UKUT 0430 (LC) — Avison Young Limited and David Jackson (Valuation Officer) and Jo Moore (Valuation Officer) and Great Bear Distribution Limited [2021] EWCA Civ 969 — BNPPDS(J) LIMITED and BCI LIMITED (as Trustees of the Blackrock Industrial Trust) v Hitchings (VO) [2025] UKUT 104 (LC) — Regulation 38(7) of The Valuation Tribunal for England (Council Tax and Rating Appeals)(Procedure) regulations 2009 (SI No 2009/2269) — appeal allowed

Before:

MR S LEVY
MR SM HOOBERMAN

Between:

GMC CAPITAL LIMITED **<u>Appellant</u>**

- and -

ANDREW MOULAND
(VALUATION OFFICER) **<u>Respondent</u>**

Regarding:

UNIT 6 MITCHAM INDUSTRIAL ESTATE, 91 STREATHAM ROAD, MITCHAM CR4 2AP
(the “subject property”)

Mr Samuel Walters from **Fore-view** for the Appellant
Mr Max Tann from **Fore-view** (Expert Witness)
Mr David Alford for the **Respondent**
Mr Alvar Aubrey for the **Respondent** (Expert Witness)

DECISION AND STATEMENT OF REASONS

DECISION

1. The appeal is allowed.

2. The Tribunal finds that the subject property should be deleted from the 2023 rating list effective from 5 August 2024.

STATEMENT OF REASONS

Introduction

3. The appellant had made a challenge seeking a deletion of the entry from the 2023 Rating List, by way of a proposal that he served on the Valuation Officer (VO) on 16 July 2025. After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was not well founded. A decision notice to this effect was served on the appellant's representative on 18 August 2025. His representative then appealed the VO's decision to the Tribunal on 4 September 2025 under regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

4. However, the VO subsequently agreed to delete the subject property from the rating list effective from 5 August 2024 and was asking the Tribunal to end the deletion effective from 5 December 2024.

5. During the hearing, one of the panel members lost his internet connection. There was a brief adjournment whilst he re-connected.

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

Background

7. The appeal property was a Warehouse and Premises.

8. As Mr Tann appeared on behalf of the appellant as an 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.

9. He declared that he was instructed under a contingency fee arrangement in his role as expert witness. Mr Tann 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.

10. 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).

11. The issue in dispute before the panel was whether the Tribunal should delete the subject property for a specific period, using its powers under Regulation 38(7) of The Valuation Tribunal for England (Council Tax and Rating Appeals)(Procedure) regulations 2009 (SI No 2009/2269) namely 5 August 2024 to 5 December 2024.

12. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included the parties' comparable assessments, their revised skeleton arguments, internal and external photographs of the subject property and a number of judgments as set out below.

13. However, prior to the hearing, the clerk provided the judgment of BNPPDS(J) LIMITED and BCI LIMITED (as Trustees of the Blackrock Industrial Trust) v Hitchings (VO) [2025] UKUT 104 (LC) dated 26 March 2025 "Blackrock", as he thought that it would assist the panel to determine the appeal.

14. For this appeal the material date for the subject property was 5 August 2024, being the effective date that the appellant sought the deletion of the subject property.

<u>*Preliminary issue*</u>

15. There was a preliminary issue in that Mr Walters objected to what he referred to as the VO's late evidence.

16. Although Mr Walters referred to the VO's late submission as evidence, it consisted of the VO's skeleton argument, a copy of a building control certificate issued by Salus dated 5 December 2024, photographs dated November 2013 and 2026 and the judgment of Edmonson (Valuation Officer) v Teeside Textiles Limited dated 6 December 1984

17. However, one's legal argument and case law is not evidence as they do not prove facts.

18. The Clerk advised the Tribunal that the Tribunal's Consolidated Practice Statement states "There is no need for parties to submit photographs and plans to the Tribunal at the two-week period, but there should be agreement before the hearing between the parties that any photographs and plans submitted to assist the panel on the day are a true representation of the situation at the material day. Such documents must be sent to the Clerk electronically prior to a remote hearing". Given these directions, photographs could be provided up to the day before the hearing, as long as both parties agreed.

19. Mr Walters also argued that the VO had now changed its argument and rather than the appeal being simply about whether or not the subject property should be deleted from the 2023 rating list, the VO were now contending that it wanted the Tribunal to order a temporary deletion and the lack of time had caused Mr Walters to rush his skeleton argument.

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

20. The history of the appeal was that it had been postponed from a previous hearing (3 February 2026). Mr Walters had telephoned the Tribunal (Mr Gath) on 20 March 2026 as he was unhappy that the appeal had not been relisted to another hearing. Mr Gath advised Mr Walters that he would relist the appeal to this hearing.

21. Furthermore, although Mr Walters had contended that he was not aware of the VO changing his argument, there had been an email exchange between the parties (with the Tribunal copied in) dated 2 February 2026 which stated “all of the additional correspondence relating to a temporary deletion and Regulation 38(7) is all new argument that the VOA didn’t raise during Challenge discussions”

22. Given the above, the panel concluded that by 2 February 2026 Mr Walters was put on notice by the VO that they were going to be seeking the Tribunal order a temporary deletion of the subject property under Regulation 38(7) The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI No 2009/2269). Therefore, Mr Walters had just over two months to prepare for the hearing.

23. The panel was therefore satisfied that the VO’s “late evidence” was not actually evidence, but their legal argument which can be provided anytime ahead of the hearing. Mr Walters was not disadvantaged by the VO seeking a temporary deletion of the subject property, as the Tribunal has these powers and Mr Walters had known for over two months that the VO were going to ask the Tribunal to use these powers, and, Mr Walters had agreed for the appeal to be listed this this hearing to enable the appeal to be brought to a conclusion.

24. However, the panel did exclude the VO’s photographs that were dated November 2013 as these were more than 10 years before the material date and therefore the panel was not satisfied that they represented the subject property as at the material date.

Relevant Law

25. Regulation 38(7) of The Valuation Tribunal for England (Council Tax and Rating Appeals)(Procedure) regulations 2009 which states:

> 38
> …
> 7) Where it appears that circumstances giving rise to an alteration ordered by the VTE have ceased to exist, the order may require the alteration to be made in respect of such period as appears to the VTE to reflect the duration of those circumstances.

26. The parties had also provided the following judgments:

- *Porter (VO) v Trustees of Gladman SIPPS* [2011] RA 33 dated 20 May 2011;
- *Aviva Investors Property Developments Ltd and PPG Southern Limited and Margaret Whitby (Valuation Officer) and Adrian Mills (Valuation Officer)* [2013] UKUT 0430 (LC) dated 16 October 2013;
- *Avison Young Limited and David Jackson (Valuation Officer) and Jo Moore (Valuation Officer) and Great Bear Distribution Limited* [2021] EWCA Civ 969 dated 1 July 2021 “Avison Young”;
- *Orchard Street Investment Management LLP and The Valuation Officer* appeal number CHG100074320 dated 6 April 2020; and

- *Segro Public Limited Company and Lucy Dyer* appeal number CHG101152807 dated 11 July 2024, which was heard by Mr Garland, a former President of this Tribunal "President's decision".

Discussion

27. There was no dispute that this Tribunal had the power under Regulation 38(7) to impose an end date of the deletion of the subject property. The crux of the appeal is the date the deletion should end. The VO had contended that the subject property should be deleted effective from 5 August 2024, but then reinstated in the rating list when the scheme of works finished on 5 December 2024 and the works were signed off by building control. However, the appellant's representative had argued that the subject property should only be entered into the rating list when the subject property was 100% complete.

28. Mr Walters had argued that the "Blackrock" decision confirmed that as there was still time to enter the subject property into the 2023 rating list, and therefore, was no need for this Tribunal to order a temporary deletion of the subject property as the VO could under their own volition, enter the subject property back into the rating list, but, only when it was 100% complete as highlighted in the "President's decision" (paragraph 24):

    "In this case, Mr Kolinsky conceded that the outstanding works were relatively minor, the absence of small power from most of the warehouse area…the remainder of the warehouse area and cabling and plug sockets would be required before the new tenant could move in. So maybe 99 percent complete but not the one hundred percent as case law required"

29. Given that small power would be bespoke or customised to a tenant, and as highlighted further in that decision, any property would remain not liable for rates until a tenant was found.

30. It was accepted by both parties that the subject property could be reinstated into the 2023 rating list when a completion notice was served, although they cannot be served retrospectively, meaning that if the panel were to allow the appeal and delete the subject property from the rating list with no order for a temporary deletion, the subject property could not be entered into the rating list until such time as the billing authority served the completion notice.

31. Mr Walters had also submitted that it would be wrong to place the property back into the rating list effective from 5 December 2024 as the VO were then introducing another material date to determine the date that the subject property should be placed back into the rating list.

32. Whilst it was agreed that a challenge cannot have more than one material date, if the panel were to find for the VO, there would be nothing to stop Mr Walters from submitting another proposal challenging the 5 December 2024 entry.

33. Mr Walters had argued that if the VO had agreed to delete the subject property from the rating list at an earlier stage, such as on receipt of the challenge, the completion notice could have been served ready for 5 December 2024. However, this scenario would be dependent on a number of factors such as all of the evidence being provided at the time and any delays, either intentional or unintentional, would result in a similar situation. The panel also noted that

the appellant did not serve his challenge until 16 July 2025 which was after the date the VO was seeking to bring the subject property back into the rating list and therefore even with this appeal, a completion notice could not be served by 5 December 2024 as they cannot be served retrospectively.

34. The Court of Appeal's judgment in "Avison Young" was authoritative in respect of the Tribunal's use of its discretionary power under Regulation 38 (7). In that judgment, the VO requested that the Tribunal's Vice President Martin Young exercise the Tribunal's discretionary power under Regulation 38(7) to restrict the period of a deletion to the duration of the works. However, Mr Young declined to make an order under Regulation 38 (7) because following the expiry of the works the appeal property would have had a lower rateable value, so he did not consider it appropriate to reinstate the former entry. Although the Upper Tribunal upheld Mr Young's VTE decision, the Court of Appeal determined that Regulation 38 (7) was appropriate. In this appeal, Mr Alford was seeking a reinstatement of the original RV of £58,500 effective from 5 December 2024.

35. Paragraph 52 of "Avison Young" states:

> *"I do not accept these arguments. So far as the first is concerned, I cannot see that a programme of building works is any more of a one-off event, or any less of a continuing event, than a road closure or the presence of scaffolding. These are all events that endure for a period of time. The artificiality of AY's approach is highlighted by its contention that the cessation of the building works on 23 January 2015 was another one-off event"*

36. Paragraph 76 of "Avison Young" also states:

> *"That being so, the starting point should have been that the power would be exercised unless there was a good reason not to do so in the exercise of the tribunal's discretion, because failure to exercise the power would mean the hereditament continued to be deleted from the list after the circumstances justifying that deletion had ceased to exist".*

37. The panel understood Mr Walters' argument that the subject property was not 100% complete as the warehouse part of the subject property had no small power, staff welfare facilities, racking, fire alarm (although the photographs suggested otherwise) and partitioning. He confirmed that these were not part of the original scheme of works, but, in accordance with *Porter (VO) v Trustees of Gladman SIPPS* [2011] RA 33 and *Aviva Investors Property Developments Ltd and PPG Southern Limited and Margaret Whitby (Valuation Officer) and Adrian Mills (Valuation Officer)* a property had to be 100% complete, not just 99%, and the lack of these items did not constitute 100% complete.

38. Mr Walters' evidence bundle set out the works that were to be undertaken as part of the scheme of works. There were:

    A. Completely remove the Ground & First floor offices;
    B. Over sheet of the asbestos roof in the warehouse;
    C. Completely replace all of the Mechanical and Electrical elements within the building including all new distribution boards, lighting, wiring and heating/cooling systems.
    D. Strip out sanitary ware, including WCs, WHBs, wall tiling and fixtures;
    E. Strip out and remove floor coverings;
    F. Strip out and remove internal roller shutter door and associated control;

G. Remove all asbestos in the asbestos report;
H. Strip out and remove all lighting and associated connections, cabling and containment back to source;
I. Strip out all heating systems throughout, including radiators, cylinders, tanks and associated and connection, cabling and pipework back to source;
J. Strip out and remove all small power, data and comms cabling, including all containment and trunking back to source;
K. Strip out all cold and hot water pipework distribution back to mains income, including all supports, insulation and valves;
L. Isolate, strip-out and rationalise all power distribution systems throughout;
M. Remove all distribution and sub-distribution boards; and
N. The offices at first floor level stripped to shell.

39. The VO had made it clear in its arguments, that it had only agreed to delete the subject property as it was undergoing a scheme of works and the scheme of works, **the circumstances that justified the deletion** in accordance with paragraph 76 of “Avison Young”, had ceased to exist on 5 December 2024, albeit there were some snagging works to be sorted to stop some leaks from the roof. Photographs taken on 6 February 2026, although over a year later, did not show any works being undertaken as part of the scheme of works. It was advertised for let or for sale with the brochure stating “refurbished warehouse” and even the appellant’s own evidence states that the time for the works by the client was 13 weeks, with the intended duration being 11 weeks.

40. Mr Alford also contended that where the Tribunal ordered a temporary deletion, a property did not have to be 100% complete and he accepted that he made this error when he defended his stance in the “President’s decision”. In effect, with defending this argument and asking the Tribunal to impose a temporary order, he was “righting his wrongs”.

41. Given the above, whilst it was agreed that the Tribunal can delete a property for a temporary period, the panel understood Mr Alford’s argument that the temporary period was only for the duration of the scheme of works. However, it was clear from the above judgments that a property could not be entered back into the rating list until it was 100% complete and ready to be occupied for the purpose for which it was built.

42. Therefore, the panel allowed the appeal by agreeing that it should be deleted from the rating list effective from 5 August 2024. But, it declined the temporary order which Mr Alford was seeking, as the subject property was not 100% complete. Mr Walter’s had clearly set out that the warehouse had no small power, staff welfare facilities, racking, fire alarm and partitioning. Whilst it may have been 98 or 99% % complete, until these items are installed, the subject property is not 100% complete and ready for occupation, in accordance with the above judgments.

Conclusion

43. In view of the above findings and conclusions, the Tribunal is satisfied that subject property should be deleted from the 2023 rating list from 5 August 2024. However, as the subject property is not 100% complete, the Tribunal cannot use its powers under Regulation 38(7) to order a temporary deletion of the subject property for a specific period of time.

Order

44. Under the provisions of regulation 38(7) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the VO to delete the entry in the rating list for the period 5 August 2024.

45. 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

46. As the grounds of the appeal 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

47. 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.

48. 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 S Levy, Senior Member
Mr SM Hooberman, Member
5 May 2026

Mr Richard Gath IRRV (Hons)
Clerk to the Tribunal
Date issued to the parties: 5 May 2026